

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

EDWARD J BUTT
13327 – 150TH ST
MAQUOKETA IA 52060

CASCADE LUMBER COMPANY
1000 – 1ST AVE E
PO BOX 220
CASCADE IA 52033

Appeal Number: 05A-UI-08533-HT
OC: 07/24/05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Edward Butt, filed an appeal from a decision dated August 15, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 6, 2005. The claimant participated on his own behalf. The employer, Cascade Lumber, participated by Human Resources Manager Will Noonan.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Edward Butt was employed by Cascade Lumber from May 1, 1995 until July 26, 2005. He was a full-time saw operator on the first shift. He

received a copy of the employee handbook on September 12, 2003. The handbook indicated disciplinary action, up to and including discharge, may occur for violations of policies.

Approximately one week prior to July 26, 2005, an employee notified Plant Manger Tim Gregory that Mr. Butt had been changing the production records from the second shift. Only shift supervisors or the plant manager may modify production records. Mr. Gregory had not seen the claimant do any of this personally so he observed Mr. Butt closely to see if he could witness it first hand. On July 26, 2005, the plant manager was again advised the claimant had modified second shift production records and Mr. Gregory examined the records personally. He could see where numbers had been erased and new numbers put in.

The plant manager confronted Mr. Butt and he admitted he had changed the reports. He had felt the second shift employees were not accurately putting down the number of hours on the work orders and said, "I call it like I see it." Mr. Gregory reviewed the situation with Human Resources Manager Will Noonan, and the two of them met with Mr. Butt. Again he admitted he had taken it upon himself to change the production records from the second shift. He felt the second shift employees where "cheating," even though he did not work that shift to know first hand what had occurred. He was discharged by Mr. Noonan for altering company records.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant may have had a legitimate concern about the second shift employees not accurately recording hours on the work orders. However, it was outside of his authority to make any modifications to those records. He did not report the matter to human resources to allow the company to deal with the issue in the way it felt best. Instead, he deliberately changed records which could have repercussions of which he was not aware. In order to be disqualified from unemployment benefits for a single incidence of misconduct, the misconduct must be a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Henry v. IDJS, 391 N.W.2d 731 (Iowa App. 1986). The administrative law judge considers the claimant's conduct to rise to the level of substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of August 15, 2005, reference 01, is affirmed. Edward Butt is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw