

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

WILLIAM E STARLING
1422 – 22ND ST
DES MOINES IA 50311

LABOR READY MIDWEST INC
ATTN PAYROLL TAX DEPT
PO BOX 2910
TACOMA WA 98401-2910

Appeal Number: 04A-UI-09702-HT
OC: 07/25/04 R: 02
Claimant: Appellant (5)

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, William Starling, filed an appeal from a decision dated September 1, 2004, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 30, 2004. The claimant provided a telephone number of (515)277-7806. That number was dialed at 7:59 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he called the toll-free number prior to the close of the record. By the time the record was closed at 8:13 a.m. the claimant had not responded to the message and did not participate. The employer, Labor Ready, participated by District Manager Steve Brandt.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: William Starling began working through Labor Ready on January 23, 1999. He was suspended for a period of time in August 2003 for stealing the cell phone of another Labor Ready employee while they were on the job site. He was allowed to return to the active duty list on a "second chance" basis.

Throughout the course of his employment with Labor Ready, four client companies had requested he not be returned to their work site. On August 24, 2004, he became angry and aggressive in the Labor Ready office because he was upset about something. Branch Manager Juan Burns told him he was not to return again and he was removed from the list of active employees.

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 had been given a number of chances to improve his performance, attitude and general conduct. The final incident was aggressive and inappropriate behavior toward the employer's other workers. This impairs the employer's ability to provide a safe and harassment-free workplace for all employees, and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of September 1, 2004, reference 04, is modified without effect. William Starling was discharged for misconduct and he is disqualified from receiving unemployment benefits until he has requalified by earning ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf