

**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**

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**Appeal Number: 04A-UI-10300-DT
OC: 08/22/04 R: 04
Claimant: Appellant (2)**

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, Alan W. Beaird, (Beaird) appealed a representative's September 13, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from the employer, All-States Equipment (All-States). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 27, 2004. Beaird participated in the hearing and was represented James Dennis, attorney at law. Dail White (White) appeared on behalf of All-States. During the hearing, Claimant's proposed Exhibit A was offered but not admitted into evidence due to relevancy and being unduly duplicative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Was Beaird discharged for work-connected misconduct?

FINDINGS OF FACT:

Beaird started working for All-States on May 3, 2004. He worked full time as a maintenance worker in All-States' manufacturing facility. His last day of work was August 16, 2004. White, the owner and CEO, discharged him on that date. The unstated reason asserted for the discharge was insubordination.

In approximately late July, White had instructed the claimant to remove the blades from a mower and take them in to a professional for an assessment of their condition and a sharpening as might be necessary. There was some delay, in part because White had reassigned Beaird to work on an unrelated business project, and for a period of time Beaird was intending to do the sharpening himself; however, he ultimately understood that White did not want him to do the sharpening himself but to take them to a professional. Late on August 10, Beaird spoke with the professional and was advised that it did not pay to sharpen the blades, but that the blades should be replaced. When Beaird reported for work on August 11, he became involved in some other work projects and did not report the professional's recommendation to White. Later in the day, White called and spoke to a welder in the shop about some work they were doing. White told the welder to ask Beaird about the mower blade, and Beaird responded, through the welder, that the professional had recommended replacing the blades. White asked Beaird, through the welder, when he had been planning to inform him of that fact. Beaird responded, loud enough for White to hear for himself through the phone, that "if he doesn't like it, he can come down here and fire me." White instructed Beaird to step out and wait for him, that he would come over. When White arrived, Beaird was outside waiting for him. He asked Beaird whether he was having a bad day, and Beaird agreed he was. White told him to calm down and that he would just forget what had been said.

On August 16, Beaird had a number of different assignments he was working on, including working on some welding equipment and installing the new blades on the mower. He also was preparing for unloading a truck shipment. For this, he needed to move a large table in front of the shop door. He used a forklift to move the table, but in the process damaged the door. After he moved the table, he returned to finish the work on the new blades. A welder working nearby on some equipment let a wire slip, and asked Beaird to assist him. Beaird declined, as he was busy working on a ball bearing and his hands were all greasy. The company vice president, who was also White's son-in-law, was nearby and told Beaird, "I don't care what you're working on, go work on that [welding equipment] right now!" Beaird put his hands on his hips, looked at the vice president, and responded, "I don't care, it's not my job to baby-sit the welders." About that time, the welder announced that he had gotten the slipped wire, that he no longer needed assistance. Beaird went back to his project, and the vice president called White. The vice-president told White that Beaird had indicated that "if he (presumably White) doesn't like it, he can fire my a - -." White came to the building and clocked Beaird out. He came into the shop area and showed Beaird his time card, saying, "I've given you your wish. I've punched you out." Beaird did not initially hear or understand what White had said, and said, "What?" so White repeated his statement. Understanding that he had been discharged, Beaird then left.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa

App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
- 2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 - 1. The employer's interest, or
 - 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is essentially the belief he had been insubordinate by challenging the employer to discharge him after previously being admonished for doing the same thing. However, the claimant denied challenging the employer to discharge him on August 16, 2004. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The employer relies exclusively on the second-hand account from the vice president; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the vice president might have been mistaken, whether he is credible, or whether White might have misinterpreted or misunderstood aspects of the vice president's report. Under the circumstances, the administrative law judge finds the claimant's first-hand information more credible. Under the circumstances of this case, while the claimant's admitted conduct on August 16 was not respectful, it did not rise to the same level of insubordination as that for which he was admonished on August 11. Rather, it was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 13, 2004 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/tjc