

**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**

**SAMIR SABIC
1303 RAVENWOOD RD #8
WATERLOO IA 50702-5446**

**PETERSON CONTRACTORS INC
104 BLACKHAWK ST
PO BOX A
REINBECK IA 50669-0155**

**Appeal Number: 06A-UI-01316-S2T
OC: 01/16/05 R: 03
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 for Misconduct

STATEMENT OF THE CASE:

Samir Sabic (claimant) appealed a representative's January 19, 2006 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Peterson Contractors (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2006. The claimant participated personally. The employer participated by Jan Ehrig, Payroll Personnel Supervisor, and Roy Stevens, Field Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 5, 2001, and at the end of his employment was working as a full-time carpenter. The claimant signed for receipt of the company handbook in February 2005. The claimant did not receive any warnings during the years of his employment. English is not the claimant's first language.

On or about December 13, 2005, the claimant found out his wife was pregnant. The employer cancelled work on December 14, 2005, due to the snow. The claimant thought there would be no work for the rest of the week because of the snow. He and his wife decided to go to Chicago to celebrate the good news with his wife's family. The claimant tried to call his supervisor but could not reach him. The claimant asked a co-worker to tell the employer he had gone to Chicago.

The employer worked on December 15, 16 and 19, 2005, but the claimant was not at work. The co-worker told the supervisor about the claimant's whereabouts. On December 20, 2005, the claimant went to the worksite to speak with the supervisor. The claimant explained that he celebrated and drank too much. The claimant said he still felt ill. The claimant thought the supervisor told the claimant to take the rest of the week off. The supervisor remembered telling the claimant to speak to someone in the main office.

The claimant went home. On December 16, 2005, the claimant received a letter from the employer informing him that he was terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was not.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. There was only one incident of questionable behavior during the claimant's four year employment. The claimant understood the supervisor to say he could have the rest of the week off. The claimant believed he was following the supervisor's instructions. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 19, 2006 decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/tjc