

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

DARRYL K HASSINGER
3066 MIDWAY RD
MARION IA 52302

CRM ENTERPRISES INC
ENVIROBEST INC
910 – 2ND AVE SW UNIT C
CEDAR RAPIDS IA 52404

Appeal Number: 05A-UI-02055-SWT
OC: 08/08/04 R: 03
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 appealed an unemployment insurance decision dated February 14, 2005, reference 03, that concluded the claimant's discharge was for work-connected misconduct. A telephone hearing was held on March 7, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Dwayne Hassinger. David Bloss participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from December 2003 through December 22, 2004. On December 20, 2004, the vice president of operations, David Bloss, reprimanded the claimant and his brother, Dwayne Hassinger, for job performance issues. Both the claimant and his brother became upset as a result of the written reprimand, and Bloss told them that they could take a personal day for the rest of the day.

On December 21, Dwayne Hassinger talked to the on-site supervisor, Brett Hasler, about he and claimant leaving work for part of the day to see their attorney. Hasler told him it was fine. When Hasler talked to Bloss about the claimant leaving work, Bloss disapproved because the claimant and his brother had been given time off on December 20 and the project needed to be completed. On December 22, Hasler told Dwayne Hassinger that he needed to speak with Bloss about his request for time off. Bloss told Dwayne that he and the claimant did not have permission to leave work. Dwayne Hassinger told the claimant what Bloss had said.

The claimant and his brother, Dwayne Hassinger, ignored Bloss' disapproval and left work in the middle of their shift. The appointment with the attorney was to discuss a potential lawsuit the claimant and his brother wanted to file against Bloss. Bloss discharged the claimant for leaving work without permission and insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Bloss was clearly a superior to Hasler, and if Bloss denied the claimant time off, that would override what Hasler said. The claimant directly disobeyed the reasonable order of the superior. Bloss was well within his rights to deny the time off. The claimant was obligated to change his appointment to a time that did not conflict with his work responsibilities. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated February 14, 2005, reference 03, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/pjs