

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

JERRY D MORGAN
LOT 26
965 – 222ND DR
OGDEN IA 50212-7502

SIOUX CITY BRICK AND TILE CO
PO BOX 87
SIOUX CITY IA 51102-0807

Appeal Number: 06A-UI-03874-HT
OC: 02/05/06 R: 02
Claimant: Respondent (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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Sioux City Brick and Tile (SCBT), filed an appeal from a decision dated March 30, 2006, reference 01. The decision allowed benefits to the claimant, Jerry Morgan. After due notice was issued a hearing was held by telephone conference call on April 26, 2006. The claimant participated on his own behalf. The employer participated by Assistant Plant Manager Ed Anderson and was represented by Attorney Steve Gerhart.

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: Jerry Morgan was employed by SCBT from September 17, 1998 until February 27, 2006. He was a full-time brick handler.

On June 9, 2005, the claimant reported his wrist was hurting him. He was referred for medical attention and released to return to work on December 21, 2005, with restrictions of not lifting more than ten pounds.

The facility was closed down for two months to do inventory. On February 22, 2006, Personnel Manager Dave Clausen and Assistant Plant Manager Ed Anderson met with the claimant and told him he was going to be returned to his job of packaging brick on February 27, 2006, now that production was beginning again. He refused, saying his hands were hurting him. The employer advised him this was considered insubordination which was a dischargeable offense. He was told he should consult with his attorney.

On February 27, 2006, Supervisor Jennifer Hensley told the claimant to go to the packaging area and start packaging the brick. He refused. The matter was referred to Mr. Anderson who met with Mr. Morgan, Ms. Hensley and the union president John Kenoyer. It was explained to Mr. Morgan that the bricks he would be packaging weighed only 3.8 pounds and he would only have to do this one hour in the morning and one hour in the afternoon to "feather" him back into a work routine. The rest of the shift he would be cleaning.

The claimant again refused to do the work stating that his hands hurt. He did not have any updated restrictions from any physician excusing him from work and he was discharged at that time.

Jerry Morgan has received unemployment benefits since filing an additional claim with an effective date of March 12, 2006.

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 released to return to work with restrictions with which the employer was complying. He was not expected to lift and package bricks for the entire day, but only two hours, one in the morning and one in the afternoon. This was in compliance with the work restrictions but the claimant refused to do the work as assigned. He had been notified well in advance of the consequences for refusing to do the work and still refused to follow the supervisor's instructions. This is insubordination which is conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 30, 2006, reference 01, is reversed. Jerry Morgan is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$2,022.00.

bgh/kjf