

**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**

**STUART D CHILDERS
1442 CONCERT ST
KEOKUK IA 52632**

**KEOKUK AREA HOSPITAL
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-11184-HT
OC: 09/19/04 R: 04
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, Stuart Childers, filed an appeal from a decision dated October 7, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 9, 2004. The claimant participated on his own behalf. The employer, Keokuk Area Hospital, participated by Employment Manager Louise Skow, Environmental Services Manager Debbie Johnson, and Facilities Manager Jim Skinner.

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: Stuart Childers was employed by Keokuk Area Hospital from August 16, 2002 until September 20, 2004. He was a part-time custodian. He received a written warning on July 28, 2004, for neglecting his duties and was advised his job was in jeopardy if there were any further incidents.

At the time of hire the claimant was provided with an employee handbook which set out the policies and rules of conduct. In addition, he was trained on the handling of bio-hazardous material and its proper disposal. There was also an in-service on the spring of 2004 which Mr. Childers attended that also covered these same procedures. Bio-hazardous material is contained in a red plastic bag and regular trash is in either a black or white plastic bag. The two are not to be mixed together as biohazard material is disposed of by a special contractor licensed to handle this, while regular trash is compacted and sent to the landfill.

On September 10, 2004, a lab technician observed the claimant mixing regular trash with bio-hazardous materials. The technician wrote up the incident and submitted it to Environmental Services Manager Debbie Johnson, who received it on September 14, 2004. The claimant was interviewed by Ms. Johnson and Facilities Manager Jim Skinner, at which time he admitted to mixing the two types of trash, saying he "forgot" what he was supposed to be doing. He was suspended pending investigation.

The investigation consisted of interviewing the lab technician and checking to determine if the claimant had received the proper training. It was determined he had violated the work rules which prohibit neglect of duty which is subject to discharge for the first occurrence. He was notified of the decision on September 20, 2004, by Mr. Skinner.

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 properly trained to the procedures to be followed in disposing of different types of trash, as well as being educated as to the reasons for these requirements and the potential hazards for failing to comply. In spite of the education and training, Mr. Childers mixed the two types of trash, even though he had been performing these duties for over two years.

This is not merely an isolated incident of poor judgment but neglect of duties which are vital to the health and safety of employees, trash collection workers and any number of others who might have accidentally come in contact with bio-hazardous material which was improperly disposed of. The employer could have been liable for any harm which came to others as a result of the claimant's errors. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 7, 2004, reference 01, is affirmed. Stuart Childers is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf