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

MITCH R OLSON
502 N ROCHE
KNOXVILLE IA 50138

BAUER BUILT INC
DBA BAUER BUILT TIRE CENTER
HWY 25 S
PO BOX 248
DURAND WI 54736-0248

Appeal Number: 04A-UI-03044-RT
OC: 02-22-04 R: 02
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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Mitch R. Olson, filed a timely appeal from an unemployment insurance decision dated March 15, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued for a telephone hearing on April 8, 2004 at 9:00 a.m., neither the claimant nor the employer responded to the notice of appeal by calling in telephone numbers where any witnesses could be reached for the hearing. Consequently, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

Don Stoeckle, for the employer, called the administrative law judge at 9:26 a.m. on April 8, 2004. At that time it was too late to have a hearing. Mr. Stoeckle informed the administrative law judge that he knew the hearing was at 9:00 a.m. but had not called in a telephone number prior to the hearing. When he reread the notice, he noted that he was supposed to and admitted that he should have called in a telephone number immediately upon receiving the notice but did not. The administrative law judge informed Mr. Stoeckle that he could not now have the hearing but that he would consider his telephone call as a request to reschedule the hearing made after the time for the hearing had expired. Although not directly relevant, the administrative law judge feels that 871 IAC 26.14(7)(b) is applicable here. That rule provides that, if a party responds to a notice of appeal and telephone hearing after the record has been closed and any party which has participated is no longer on the telephone line, the administrative law judge shall not take evidence of a late party but shall inquire as to why the party was late in responding to the notice of appeal and telephone hearing. For good cause shown, the administrative law judge shall reopen the record and cause for the notice of hearing to be issued to all parties of record. The record shall not be reopened if the administrative law judge does not find good cause for the tardy parties late response to the notice of appeal and telephone hearing. Failure to read or follow the instructions on the notice of appeal and telephone hearing shall not constitute good cause for reopening the record. Although there is no record established here because there was no hearing, the administrative law judge believes nevertheless that that rule is appropriate. The administrative law judge concludes that the employer has failed to demonstrate good cause to reschedule the hearing. Mr. Stoeckle conceded that he had received the notice and knew the hearing was at 9:00 but did not call in a telephone number because apparently he had not read the notice carefully. When he was not called for the hearing, he reread the notice and noted that he should have called in a telephone number immediately upon receipt of the notice and then called the administrative law judge. The administrative law judge concludes that Mr. Stoeckle did not read or follow the instructions on the notice of appeal and did not call in a timely fashion after the hearing was scheduled and therefore has not demonstrated good cause for rescheduling the hearing. The administrative law judge also notes the decision herein is in favor of the employer and therefore no rescheduling is necessary. The employer's request to reschedule the hearing is denied.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on March 15, 2004, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicated he was discharged from work on February 24, 2004 because he failed to perform satisfactory work even though he was capable of doing satisfactory work.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although neither party participated in a hearing, the administrative law judge concludes that there is a preponderance of the evidence in the administrative file that the claimant was discharged for disqualifying misconduct. In its protest, the employer stated that the claimant was discharged for misconduct on February 24, 2004 and referred to a written correction notice and separation of employment which indicated that the claimant was discharged for forgetting to load 18 tires and indicating that he had been warned verbally and with a written correction previously. The employer participated at fact-finding and stated that the claimant was discharged because he could not keep paperwork straight but that five months later he would get it done. The employer stated that he felt the claimant was capable of doing the work but would not. The claimant did not participate in fact-finding. In his appeal letter, the claimant states nothing substantive but only indicates he wishes to appeal the decision. Although this is a scant record, the administrative law judge concludes that there is a preponderance of the evidence that the claimant failed to do his work properly even though he was capable of doing so and apparently was late with his paperwork. The claimant had been warned about this but persisted in failing to do his work properly. The administrative law judge concludes that claimant's behavior giving rise to his discharge were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince willful or wanton disregard of the employer's interests and, at the very least, are carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance

benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of March 15, 2004, reference 01, is affirmed. The claimant, Mitch R. Olson, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

tjc/kjf