

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

FRED C HOEFLIE
APT 2
501 – 27TH ST
MOLINE IL 61265

SIVYER STEEL CORP
225 S 33RD ST
BETTENDORF IA 52722-6403

Appeal Number: 05A-UI-11823-HT
OC: 10/16/05 R: 04
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, Sivyier Steel, filed an appeal from a decision dated November 15, 2005, reference 01. The decision allowed benefits to the claimant, Fred Hoeflie. After due notice was issued a hearing was held by telephone conference call on December 7, 2005. The claimant participated on his own behalf. The employer participated by Personnel Manager Tracy Sabin and Supervisor Ty Inman.

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: Fred Hoeflie was employed by Sivy Steel from April 11 until October 17, 2005. He was a full-time maintenance person on the second shift.

On September 20, 2005, Supervisor Ty Inman could not find the claimant and enlisted the help of other supervisors to find him. Eventually he was discovered asleep in a furnace area. It was noted he smelled strongly of alcohol. When he was awakened Mr. Inman observed he was glassy-eyed, staggering and his speech was slurred. Mr. Hoeflie admitted to drinking and was sent home. The next day he received a written warning and told such conduct was unacceptable.

On Friday, October 14, 2005, Mr. Inman again observed the claimant and believed him to be under the influence of alcohol. He summonsed Human Resources Manager Vicky Stark and the two of them talked to the claimant. His speech was slurred, his eyes were glassy and bloodshot, and he was unsteady on his feet. When questioned he admitted to having consumed at least two beers with his lunch before coming to work. The employer sent him home and told him to report for a hearing on Monday, October 17, 2005. After the hearing he was discharged for being at work in an "unfit state."

Fred Hoeflie has received unemployment benefits since filing a claim with an effective date of October 16, 2005.

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 advised his job was in jeopardy as a result of sleeping on the job and being under the influence of alcohol at work. In spite of the warning the claimant again was intoxicated less than a month later. Mr. Hoeflie does not deny drinking only that he was not in an "unfit state" at work. However, the employer's observations were clear and concise that he was unsteady on his feet and his speech was slurred. These two conditions alone would make it difficult for him to perform his job duties as required, in addition to which he presented a danger to himself and others. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and 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 November 15, 2005, reference 01, is reversed. Fred Hoeflie 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 \$1,396.00.

bgh/tjc