**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

**CHADRON D NOVOTNY**
**3507 N 47TH AVE**
**OMAHA NE 68104-3629**

**FEURING PROMOTIONS INC**
**1227 S MAIN ST**
**COUNCIL BLUFFS IA 51503-6554**

**Appeal Number: 06A-UI-02720-DT**
**OC: 01/29/06 R: 01**
**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:

Chadron D. Novotny (claimant) appealed a representative's February 20, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Feuring Promotions, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on April 7, 2006. The claimant participated in the hearing. Keven Feuring appeared on the employer's behalf and presented testimony from two other witnesses, Brian Sanny and Greg Wobken. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 2002. He worked full time as a screen print technician/press operator at the employer's contract apparel screen print and embroidery business. His last day of work was February 2, 2006. The employer discharged him on that date. The stated reason for the discharge was violation of the employer's conflict of interest policy which prohibited working for a competing business.

The claimant had been provided a copy of the employer's policy prohibiting working for a competing business. In late January 2006, the claimant had made comments to his supervisor, Mr. Sanny, regarding the fact that he was involved in another business which was competing for a specific job for which the employer was also bidding. The employer ultimately was awarded the job, so Mr. Sanny did not pursue the matter with the claimant, but began observing the claimant more closely. On or about January 31, 2006, the claimant commented to Mr. Sanny that there were approximately 100 shirts awaiting embroidery in the employer's embroidery division for which the claimant had done the screen printing on the other side of the shirt in his work with another screen-printing business. The contractor for which the work was being done was a client for which the employer frequently did work; the screen printing was work that the employer would have been able to do in its business had it been awarded the bid for that portion of the work. As a result of this occurrence, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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).

Even without prior warning, the claimant knew or should have known that doing work for another business that was in competition with the employer for the same work was not in the employer's best interests. The claimant's violation of this policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 20, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 2, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

ld/kkf