

**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**

**BILLY S BAHLS  
209 MICHAEL ST SW  
CEDAR RAPIDS IA 52404-6028**

**CEDAR VALLEY STEEL INC  
22 – 41<sup>ST</sup> AVE SW  
CEDAR RAPIDS IA 52404**

**Appeal Number: 06A-UI-04922-LT  
OC: 04-02-06 R: 03  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the May 3, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on May 23, 2006. Claimant participated. Employer participated through Kory Catlett, safety director.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time iron worker through April 5, 2006 when he was discharged. Employer enacted a six-foot tie off policy on January 26, 2006 that requires iron workers to attach a fall prevention cable to the safety harness if working that far or higher above the ground. The policy was explained to all employees, including claimant, and all were told if their immediate foreman gave conflicting instructions they were to contact Kory Catlett, safety

director, who had final authorization on all safety issues. Even before that employer followed the most stringent safety rules whether the general contractor's or employer's.

On April 5, 2006 Catlett found claimant and his foreman, Mike Alden, working about 13 feet above the ground installing metal decking on a roof without being tied off. He verbally warned each and when he returned that afternoon with the written warning documentation he found claimant working under the same conditions not tied off again. Catlett told claimant to leave for the day and then told him to wait by the truck for a safety meeting and the paperwork but while Catlett was notifying others of the safety meeting, claimant left the job site within five minutes.

While working for employer on another job in August 2005 he violated the general contractor's tie off rule and was warned. When he violated the tie off rule on the same job again in December 2005 the general contractor removed him from the job.

Claimant maintains that he was only following Alden's instructions but Alden did not tell claimant he would get in trouble for tying off and only said he did not have to tie off. Claimant was aware he was working under the same conditions he was earlier in the day when Catlett told him he must tie off.

The claimant has received unemployment benefits since filing a claim with an effective date of April 2, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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).

Claimant's argument he was only following his foreman's instructions is disingenuous at best as he was aware of Catlett's earlier safety directive to tie off under the same conditions that morning. Employer is charged legally under both federal and state law with providing its employees a safe working environment; furthermore, it is in employer's best financial interest to avoid employee injuries. Given claimant's history of tie off policy violations on the 2005 job, his deliberate disregard for his personal safety, employer's safety policy, and the safety director's specific instruction constitutes disqualifying misconduct. Benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The May 3, 2006, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,620.00.

dml/pjs