

**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**

**BRETT H HARRIS
5148 NW 2ND ST #5
DES MOINES IA 50313**

**STATE STEEL OF DES MOINES INC
PO BOX 3351
DES MOINES IA 50316**

**Appeal Number: 04A-UI-10696-CT
OC: 09/12/04 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:

Brett Harris filed an appeal from a representative's decision dated September 30, 2004, reference 01, which denied benefits based on his separation from State Steel of Des Moines, Inc. After due notice was issued, a hearing was held by telephone on October 26, 2004. Mr. Harris participated personally. The employer participated by Emmett Huston, Plant Manager; James Madison, Shop Worker; and Steve Poole, Shop Supervisor. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Harris was employed by State Steel of Des Moines, Inc. from November 30, 2001 until September 13, 2004 as a full-time warehouseman. On September 8, 2004, Mr. Harris called before the start of his shift to report that he would be late because a refrigerator repairman was coming to his home. He did not report for work or re-contact the employer regarding his intentions.

When Mr. Harris reported to work on September 9, Emmett Huston questioned him about this absence of the prior day. He explained that the repairman had not arrived until approximately 3:00 in the afternoon and that he had not thought to call the employer to explain why he was not at work. Mr. Huston then began asking questions as to why there had been no set time for the repairman. He also asked questions regarding Mr. Harris' landlord and where he lived. The questions upset Mr. Harris, who responded by telling Mr. Huston that he had no "fucking" right to be in his "fucking" business. Mr. Harris' voice was raised to the extent that he could be heard by Steve Poole who was approximately 60 feet away. James Madison also heard Mr. Harris' statement to Mr. Huston. As a result of this exchange, Mr. Harris was discharged on September 13, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Harris was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Harris' discharge was prompted by his exchange with Mr. Huston, his plant manager, on September 9. Mr. Huston's questions regarding Mr. Harris' landlord may well have been inappropriate. However, this would not justify Mr. Harris' verbal response. His response was to use profanity in a confrontational, argumentative context. The response was loud enough that it could be heard by two other employees in the area. Mr. Harris' conduct had the potential to undermine Mr. Huston's authority as plant manager.

The administrative law judge concludes that Mr. Harris' conduct on September 9 constituted a substantial disregard of the standards of behavior the employer had the right to expect. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated September 30, 2004, reference 01, is hereby affirmed. Mr. Harris was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf