

**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**

**BRET M STREIT
327 INDIANA
WATERLOO IA 50703**

**BUILDING PRODUCTS INC OF IOWA
PO BOX 1413
405 – 1ST AVE NE
WATERTOWN SD 57201**

**MR. ROBERT ANDRES
ATTORNEY AT LAW
PO BOX 2634
WATERLOO IA 50703**

**Appeal Number: 04A-UI-12739-BT
OC: 10/31/04 R: 03
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
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Bret Streit (claimant) appealed an unemployment insurance decision dated November 19, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Building Products Inc. of Iowa (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 21, 2004. The claimant participated in the hearing with Attorney Robert Andres. The employer participated through Debbie Hammergren, Assistant Manager. Claimant's Exhibit A was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time warehouse stager from February 6, 2004, through November 3, 2004. He was off work intermittently since March 8, 2004, due to a work-related injury. On October 19, 2004, the claimant was released to return to work with restrictions that the employer was able to accommodate. The employer gave the claimant a job that had been approved by his case manager and the doctor. The claimant reported to the employer he did not have transportation so the employer gave him the option of returning to work on October 25, 2004. The claimant started working on October 25, 2004, but did not complete his shift as he claimed the job was not within his restrictions and was causing him pain. He was a no-call/no-show on October 26 and 27. He called the employer on October 28, 2004, to find out whether the doctor had sent over an approved job description and would not return to work until he saw it. The claimant talked to his caseworker on October 29, 2004, and knew the paperwork had been sent. He called work and stated that he would not be working that day due to doctor appointments. He returned to work on November 1, 2004, but only worked for a little over one hour as he again claimed the job was hurting him. He was a no-call/no-show on November 2, 2004, and the employer made the decision to terminate him. The employer tried to reach the claimant, but he did not answer and does not have an answering machine. The employer sent him a certified letter when it was unable to reach him. The claimant called in on November 3, 2004, at which point he was told he had been discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for three days of no-call/no-show. He knew he was required to report his absence if he was not going to be at work. The employer went out of its way to work with the claimant as long as the claimant talked with the employer. Simply because the claimant disagreed that the light duty job he was given was within his restrictions, did not negate his responsibility to inform the employer he was going to be absent. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 19, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/smc