

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

THOMAS M CHITWOOD
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BERWICK IA 50032-0241

BINDERY 1 INC
1640 E CRT AVE
DES MOINES IA 50316

Appeal Number: 05A-UI-05040-C
OC: 04/03/05 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:

Thomas Chitwood filed an appeal from a representative's decision dated May 3, 2005, reference 01, which denied benefits based on his separation from Bindery 1, Inc. After due notice was issued, a hearing was held on May 24, 2005 in Des Moines, Iowa. Mr. Chitwood participated personally. The employer participated by Lorraine Rokitnicki, Owner; Cindy Ruby, Supervisor; and Gigi Toporek, President.

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. Chitwood was employed by Bindery 1, Inc. from

October 9, 2003 until March 14, 2005 as a full-time machine operator. On March 11, 2005, Cindy Ruby asked why he had slowed a machine down. Rather than providing her with a reason, Mr. Chitwood responded by asking if she saw him having any problems with the machine. He did not explain to Ms. Ruby that he slowed the machine down so that it would be less likely to jam, thereby increasing its efficiency. After some further discussion, Mr. Chitwood stated, "I'm out of here" and returned to his work station.

Approximately one hour later, Mr. Chitwood approached Ms. Ruby to ask if she had spoken to Gigi Toporek about a schedule change. He had increased the speed on the machine he was operating and was experiencing increased problems. He and Ms. Ruby were speaking in raised tones and Mr. Chitwood was shaking his finger near her face. The argument could be seen by other employees but they may not have been able to overhear what was being said because of machinery running. Mr. Chitwood again made the comment, "I'm out of here." At that point, he was directed by Ms. Ruby to clock out and leave. Because he was not leaving, Ms. Ruby telephoned Ms. Toporek and indicated to Mr. Chitwood that she wanted to talk with him. Mr. Chitwood took the telephone and hung it up without speaking to the individual on the other end. He was under the impression that it was the plant manager on the telephone. He then left the plant as directed.

Mr. Chitwood returned to the workplace on the following Monday prior to the start of his shift. He came in early because he wanted to discuss the events of March 11. During the meeting with the employer on March 14, Mr. Chitwood was discharged because of his conduct of the prior Friday. He described his conduct as "overly confrontational." He had previously been disciplined on April 12, 2004 because of an argument with Ms. Ruby.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Chitwood was separated from employment for any disqualifying reason. The employer contended that he quit when he said "I'm out of here" and left on March 11. He had used similar words earlier in the shift but had returned to his work station. He left on March 11 only after being directed to do so by the employer. For the above reasons, the administrative law judge concludes that the employer initiated the separation by advising Mr. Chitwood on March 14 that he no longer had employment. Therefore, the separation is considered a discharge. 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. Chitwood was clearly insubordinate on March 11. The insubordination involved three separate incidents, none of which, standing alone, would constitute disqualifying misconduct. When Ms. Ruby initially approached him to ask why the machine was slowed down, Mr. Chitwood could have given her a straightforward explanation. Instead, he challenged her to find a problem resulting from slowing the machine down. The next incident involved Mr. Chitwood's response to increased problems when he increased the speed of the machine. Rather than discussing the options for maintaining the efficiency of the machine, Mr. Chitwood engaged in an argument with Ms. Ruby, his supervisor. It is true that other employees supervised by Ms. Ruby may not have been able to overhear the argument. However, they were able to witness the exchange in which Mr. Chitwood was shaking his finger at Ms. Ruby. A reasonable person might conclude that they were engaged in an argument.

The final incident of insubordination was when Mr. Chitwood hung up the telephone without talking to the party on the other end even though he knew it was a member of management who wanted to talk to him. The person on the other end was the president of the company but Mr. Chitwood thought it was the plant manager. Even if it had been the plant manager, Mr. Chitwood would have been insubordinate in refusing to talk to him.

The administrative law judge concludes that the above three incidents, when viewed in their totality, constituted insubordination sufficient to result in disqualification from benefits. Mr. Chitwood had previously been disciplined for engaging in an argument with a supervisor. Therefore, he knew that such conduct was contrary to the employer's standards and could result in his discharge. Inasmuch as disqualifying misconduct has been established by the evidence, benefits are denied.

DECISION:

The representative's decision dated May 3, 2005, reference 01, is hereby affirmed. Mr. Chitwood 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/pjs