

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

KEVIN R MATTER  
2906 – 12<sup>TH</sup> ST  
ROCK ISLAND IL 61201

SEAL AND STRIP INC  
P O BOX 361  
BETTENDORF IA 52722

Appeal Number: 04A-UI-09235-HT  
OC: 10/12/03 R: 04  
Claimant: Appellant (2-R)

**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, 4<sup>th</sup> 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:

The claimant, Kevin Matter, filed an appeal from a decision dated August 20, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 20, 2004. The claimant participated on his own behalf. The employer, Seal and Stripe, Inc., participated by Bookkeeper Rachel Carpenter. Exhibit A was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kevin Matter was employed by Seal and Stripe, Inc., from July 8, 2001 until August 2, 2004. He was a full-time laborer/driver.

The employer discharged the claimant because he allegedly left the work site early without the permission of the supervisor. The claimant denied this and indicated he was discharged by the superintendent the first thing in the morning on August 2, 2004, before even reporting to the job site, and he had not left the job site early at any time prior to that date.

The claimant appears to be under some restrictions from his physician at the present time.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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).

Seal and Stripe, Inc., maintained the claimant was discharged for leaving the work site early without the permission from a supervisor. The claimant has denied this. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to present any first-hand, eyewitness testimony regarding any of the incidents which led to the decision to discharge the claimant. There is nothing in the record to rebut the claimant's denial and the administrative law judge must conclude the employer has failed to meet its burden of proof.

Mr. Matter maintained he had injured his back on the job, he did not fill out any first report of injury and did not make any diligent attempt to talk to the superintendent, the owner or anyone in higher management. He did not see a doctor, even in the emergency room on his own time, to provide any work restrictions to the employer prior to his separation. The documents presented at the hearing were an assessment by a doctor done more than two weeks after the separation and almost three months after the alleged date of the injury. As such they are not dispositive of any of the issues in the present case and are not relevant as to why the claimant was discharged.

However, the restrictions by his physician may be relevant to whether he is able and available for work in his usual occupation. That issue should be remanded to the Claims Section for determination.

DECISION:

The representative's decision of August 20, 2004, reference 01, is reversed. Kevin Matter is qualified for benefits provided he is otherwise eligible.

The issue of whether the claimant is able and available for work is remanded to the Claims Section for determination.

bgh/s