

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

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WEBSTER CITY IA 50595

BEAM INDUSTRIES  
1700 W 2<sup>ND</sup> ST  
WEBSTER CITY IA 50595

Appeal Number: 04A-UI-09399-ET  
OC: 08-15-04 R: 01  
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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 1, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 22, 2004. The claimant participated in the hearing. Terry McCoy, Personnel Manager, Dave Carr, Production Supervisor, and Tony Thath, Welder, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Beam Industries from June 21, 2004 to July 20, 2004. On July 20, 2004, the claimant walked off the job without notifying anyone he was leaving. At 8:25 a.m. the claimant left a voice mail message for Personnel

Manager Terry McCoy. He left and asking Ms. McCoy to call him. At 8:40 a.m. Ms. McCoy and Production Supervisor Dave Carr returned the claimant's call. The claimant stated he wrenched his back and had fallen down at work and left because he was embarrassed and because he wanted to go home and get some aspirin. Ms. McCoy told the claimant to come back to work and meet with Mr. Carr to discuss the situation. Mr. Carr went to the welding department to talk to the other employees. Welder Tony Thath told Mr. Carr he did not see the claimant fall down but did see him outside on his way to the parking lot and when he asked where he was going, the claimant stated he was "not getting paid enough to get burned." The claimant returned to work at 9:30 a.m. and Mr. Carr terminated his employment for walking off the job because after speaking to Mr. Thath, the employer did not believe the claimant's account of the events preceding his leaving.

#### 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 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 of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the claimant stated he walked off the job because he wrenched his back, fell down, was embarrassed and went home to get some aspirin during his break, the administrative law judge did not find his testimony credible. It was not a scheduled break time and none of the other employees in the welding area saw the claimant fall down or act in a manner that would indicate he wrenched his back and was experiencing pain. He did not clock out or tell anyone he was leaving because of his back but did tell Mr. Thath he was not getting paid enough to get burned. The claimant also seemingly argues that he was discharged because of a back injury/surgery that occurred two years prior to the time he was hired and because he was coming to the end of his 30-day probation. The employer, however, credibly testified it does not use a new employee probationary system and did not tell the claimant he was on probation. The employer intended to allow him to return to work that day until it became apparent that he was not truthful about the incident. The claimant's actions July 20, 2004 demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The September 1, 2004, reference 01, decision is affirmed. 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.

je/b