

**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**

**STEVE L THOMAS
633 – 8TH ST
WEST DES MOINES IA 50265**

**ACCURATE OFFICE INSTALLATION INC
12788 NW SHELDAHL RD
POLK CITY IA 50226-7525**

**Appeal Number: 04A-UI-04228-B4T
OC: 03-21-04 R: 02
Claimant: Appellant (5)**

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:

Steve L. Thomas appealed from an unemployment insurance decision dated April 7, 2004, reference 01, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits and the employer's account would not be charged. The records indicated he was discharged from work with Accurate Office Installation, Inc. on March 13, 2004 for excessive unexcused absenteeism after being warned.

The decision will be modified by changing the discharge date only. A telephone conference hearing was scheduled and held on April 27, 2004, pursuant to due notice. Steve L. Thomas participated. Jeff Pitts, President, participated on behalf of Accurate Office Installation, Inc. and Roy Crook, Installer, participated as a witness on behalf of the employer.

Official notice was taken of the unemployment insurance decision dated April 7, 2004, reference 01, together with the pages attached thereto (5 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Steve L. Thomas was employed with Accurate Office Installation, Inc. as an installer of equipment from September 6, 1999 through March 24, 2004. The claimant performed the job duties of a furniture installer.

During the tenure of the claimant's employment, he became engaged in three fights on various job sites. While the confrontations were during past years, the claimant was warned on numerous occasions verbally that such conduct could not be permitted while he was on the job. The employer did not issue any written warnings to the claimant of any kind. The claimant's immediate supervisor was the one having a physical confrontation with the claimant at one time. Both parties were warned by Jeff Pitts, President, that such conduct could not continue.

The claimant continually became upset and was engaged in throwing things at co-employees.

In addition, the claimant was verbally warned many times regarding his attendance. The claimant would report for work and leave at his own convenience during work hours without telling anyone he was leaving. Accurate Office Installation, Inc. is a small business and did not maintain records of absenteeism and tardiness nor were written warnings utilized when employees behaved improperly.

The claimant's last day of work on the job was March 24, 2004. The claimant came to the office to pick up his check and stated he was going to visit his mother-in-law. The claimant was informed that he was to report for work on Friday, March 26.

On March 26, 2004, the claimant failed to report for work as directed and did not contact the employer until March 28, 2004. The claimant was apparently visiting his mother-in-law and having transportation problems and could not return to work. The claimant had little or no concern for behaving in an appropriate manner while he was on the job sites with co-employees. In addition the claimant's absenteeism and tardiness record was substantial throughout his tenure of employment for justifiable reason.

While the testimony is conflicting with respect to the dates and incidents that occurred in the past, the claimant was discharged from his employment on March 28, 2004 because he had failed to report for work on and after March 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The testimony of witnesses provided detailed facts as to the specific reasons for the claimant's discharge. While not detailed in documentary evidence, the testimony with respect to the claimant's inappropriate conduct on various occasions is believable and properly established.

The record also establishes excessive unexcused absenteeism on the part of the claimant. The claimant's conduct over the period of his employment establishes that he had little or no regard for reporting for work and remaining at work on the job when he was assigned by the employer. Past acts and warnings can be used to determine the magnitude of a current act of misconduct. The termination of employment must be based on a current act.

The claimant knew that he was required to report for work on March 26, 2004 and failed to do so because he was visiting his mother-in-law out of town and possibly had transportation problems. The claimant did not notify the employer until March 28, 2004 when he returned and held a conversation with Jeff Pitts, President. Jeff Pitts informed the claimant that he was no longer needed because of his absenteeism and tardiness record and other incidents of misconduct in the past.

The administrative law judge concludes that Steve L. Thomas was discharged from his employment on March 28, 2004 within the intent and meaning of Iowa Code Section 96.5-2-a and the foregoing sections of the Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated April 7, 2004, reference 01, is modified with respect to the date of the claimant's discharge. Steve L. Thomas was discharged for misconduct in connection with his employment at Accurate Office Installation, Inc. on March 28, 2004 for excessive unexcused absenteeism and tardiness after being verbally warned on numerous occasions.

tjc/b