

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JEFFREY W. WILCKE**  
Claimant

**APPEAL NO. 09A-UI-06712-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**  
Employer

**Original Claim: 12/12/08  
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 16, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 27, 2009. The claimant participated personally and was represented by Colin Murphy, attorney at law. The employer participated by Jim Teachout, extrusion press supervisor, and Lorna Zrostlik, personnel recruiter. The record consists of the testimony of Jim Teachout, the testimony of Lorna Zrostlik, the testimony of Jeffrey Wilcke, the testimony of Greg Harms, and Employer's Exhibits 1 through 7.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant had been employed by Winnebago since March 20, 2000. His termination occurred on March 24, 2009. The incident that led to his termination occurred on February 26, 2009. On that date, the claimant threw a piece of aluminum at another employee. The piece of aluminum measured 4 inches by 6 inches and weighed two or three pounds. The act of throwing this piece of aluminum was a violation of the employer's work policies and constituted a failure to observe safety regulations.

## 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.

The evidence in this case established that the claimant committed a violation of the employer's work policies by throwing a piece of aluminum at another employee. The claimant initially told his supervisor, Mr. Teachout, that he was messing around. At the hearing, he tried to justify his actions by saying he was trying to get his co-employee's attention and that he did not actually hit the co-employee with the piece. Whatever the claimant's reason for throwing the piece of aluminum, those reasons do not justify an action that could potentially injure another employee.

Misconduct is a deliberate violation or disregard of standards of behavior that the employer has the right to expect of employees. The employer has a right to expect that employees will not throw potentially dangerous objects at other employees, even if the intention is to get their attention. The claimant acknowledged that what he did was wrong. A safety violation, particularly one aimed at an individual, constitutes misconduct that disqualifies the claimant from receiving unemployment benefits.

**DECISION:**

The representative's decision dated April 16, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw