

**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**

**SHANNON K KALBFELL
105 LANDMARK DR #93
COUNCIL BLUFFS IA 51503**

**KVAERNER SONGER INC
455 RACETRACK RD
WASHINGTON PA 15301**

**ELLEN BATTEN
CWC UNIT
IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-00914-LT
OC: 11-27-05 R: 01
Claimant: Appellant (1R)**

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)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 12, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 9, 2006. Claimant did participate with Craig Lewis. Employer did participate through Brian Lowe and Jackie Schropp.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time ironworker through September 29, 2005 when she was discharged. She and other members of her crew, including the foreman, left early before the work was complete on September 28 because it was raining. Claimant and others were fired if they had received a prior warning about leaving early without permission and employees who had not been previously warned were issued written warnings for this incident.

A written warning was issued to claimant and 26 others via the union steward on August 12 after the crew had left early on August 11. While the work platform was under six to eight feet of water in the elevator shaft from rain the night before, employer has an agreement with Hitachi International that the iron workers will be paid to wait out the weather in a conditioned shelter until further instruction from Brian Lowe or site managers, but not foremen. This caveat was also announced verbally during a Monday morning safety meeting.

As of November 28, 2005, claimant had worked for Day & Zimmerman NPS, Inc. in Nebraska and had earned \$5,546.82 in gross wages. (attachment to appeal letter)

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).

Claimant was warned verbally and in writing that she may not leave the work site due to weather conditions without management approval and did so in spite of that warning. Since she was provided shelter and payment of wages while waiting, employer's request was reasonable. Claimant's departure without permission from management on September 28, 2005 was a deliberate violation of a prior warning and was misconduct. Benefits are denied.

DECISION:

The January 12, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND:

The out-of-state requalification issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

dml/pjs