

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

KENNETH L BIGELOW
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WARSAW IL 62379

MATRIX METALS LLC
PO BOX 6005
KEOKUK IA 52632

Appeal Number: 06A-UI-00222-DT
OC: 12/04/05 R: 04
Claimant: Appellant (2)

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
Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Kenneth L. Bigelow (claimant) appealed a representative's December 29, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Matrix Metals, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2006. The claimant participated in the hearing. The employer received the hearing notice; on February 7, 2006 the employer's representative contacted the Appeals Section and indicated that the employer wished to withdraw its protest to the claimant's claim for benefits and in the alternative was opting not to participate in the hearing. Therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the

law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Can the employer now withdraw its initial protest to the claimant's claim for unemployment insurance benefits? Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 7, 1973. He worked full time as a blast operator on the second shift (2:00 p.m. to 10:00 p.m.) in the employer's foundry for steel castings. His last day of work was November 28, 2005. The employer suspended him that day and discharged him on December 1, 2005. The reason asserted for the discharge was the accusation that he had been drinking alcohol while on the job.

Toward the end of the claimant's shift on November 28, the claimant's assistant reported to a second shift supervisor that the claimant had been drinking on duty on November 28, 2005. The supervisor believed he observed some unsteadiness in the claimant. However, the claimant had not consumed any alcohol since at least 11:00 p.m. the night of November 27, 2005, nearly 23 hours before being confronted by the supervisor. He does have a somewhat unsteady gait due to a Parkinson's-like condition for which he is on medication. The claimant asserts that his assistant made the false allegation against him because he was afraid the claimant was going to report him for something he had done.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the employer can now withdraw its protest to the claimant's claim. The employer does not have the right to withdraw a timely protest. Further, claimants are not automatically qualified in the absence of a protest. Kehde v. Iowa Division of Job Service, 318 N.W.2d 202 (Iowa 1982). Here, the fact-finding representative's decision of record indicated that there was at least some question as to a potential disqualification, which must now be pursued and resolved. The employer's attempted withdrawal of the protest is ineffective.

The substantive issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the belief he had been at work under the influence or consuming alcohol while at work. The employer has

not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 29, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs