

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

RICHARD BUFFINGTON  
2906 – 210<sup>TH</sup> AVENUE  
TITONKA IA 50480

WINNEBAGO INDUSTRIES  
P O BOX 152  
FOREST CITY IA 50436

Appeal Number: 04A-UI-04401-ET  
OC 06-29-04 R 02  
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 April 7, 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 May 11, 2004. The claimant participated in the hearing. Gary McCarthy, Personnel Supervisor; Keith Albertson, Production Supervisor; and Dave Midtgaard, Plant Manager, 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 advanced assembler fabricator for Winnebago Industries from January 11, 1993 to March 22, 2004. On March 19, 2004, the claimant cut through the

line of employees waiting to clock out and elbowed a co-worker, Terry Thompson, in the back. The claimant was upset with Mr. Thompson because he believed he "tattled" on him earlier in the shift. The claimant received a written warning March 10, 1995, for verbal harassment after he used obscene and abusive language toward a co-worker. On November 6, 1996, he was warned after an employee complained the claimant looked directly at her and then ran into her on purpose. On April 13, 2000, he was warned after an employee complained he was making inappropriate sexual comments about co-worker's "rear ends." On April 23, 2003, an employee filed a formal complaint stating the claimant verbally abused her by calling her an "old hag." On May 23, 2003, the claimant received a written warning and two-day suspension for physically harassing another employee by touching him in an improper manner. The employer terminated the claimant's employment March 22, 2004 for his actions of March 19, 2004.

#### 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). The claimant admitted elbowing Mr. Thompson in the back March 19, 2004, but testified he was not angry when he did so and did not think he hit him "that hard." He told the employer he thought Mr. Thompson "tattled" on him earlier and the fact that he cut through the line to elbow Mr. Thompson indicates his actions were done in anger. The claimant had received five previous warnings and a suspension regarding his behavior toward co-workers and his actions March 19, 2004, were inappropriate and unprofessional as well as simple assault. The warnings and suspension put the claimant on notice that a further incident could result in termination of his employment and his actions of March 19, 2004 were not an isolated incident. The claimant's conduct 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 administrative law judge concludes 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 April 7, 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/s