

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

TIMOTHY A HAEGE
1814 EASTERN DR SW
CEDAR RAPIDS IA 52404

LLOYD TABLE COMPANY
102-122 W MAIN ST
PO BOX 899
LISBON IA 52253-0899

Appeal Number: 05A-UI-11348-HT
OC: 10/09/05 R: 03
Claimant: Respondent (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 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Lloyd Table, filed an appeal from a decision dated October 26, 2005, reference 01. The decision allowed benefits to the claimant, Timothy Haege. After due notice was issued, a hearing was held by telephone conference call on November 21, 2005. The claimant participated on his own behalf. The employer participated by Shop Foreman Arnold Lutheran.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Timothy Haege was employed by Lloyd Table from April 11, 2002 until October 10, 2005. He was a full-time production worker.

In September 2004 the claimant received a written warning from Shop Foreman Arnold Lutheran. Mr. Haege had become irritated his lunch had been "squashed" in the break room refrigerator and slammed the door so hard several braces were broken. The warning advised him he had to control his temper and avoid physical displays of anger.

On October 5, 2005, the claimant was observed by Mr. Lutheran throwing an empty pallet which bounced back and hit him. This was the danger the employer had been trying to avoid when the first warning was issued, the potential for injury to the claimant or others. Mr. Lutheran suspended the claimant for three days, but Mr. Haege became angrier and began swearing and arguing with the foreman. As a result he was given a four-day suspension.

After the claimant was suspended and other employees became aware of the circumstances, others came forward to complain they had seen him throwing various items around when he became angry. Mr. Lutheran consulted the claimant's personnel file and also his supervisor, and the decision was made to discharge him. Mr. Haege was notified by the foreman over the telephone on October 10, 2005.

Timothy Haege has received unemployment benefits since filing a claim with an effective date of October 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had been advised he must control his temper while at work and avoid throwing things around. Such conduct presented a substantial danger of harm to the employer's property and injury to the claimant and other employees. Mr. Haege was unable to control his temper and his physical outbursts in spite of the warning, and the final incident did result in some injury to himself. After being told to go home by his foreman he became insubordinate, using inappropriate language and arguing about the suspension. He violated the provisions of his warning and jeopardized the safety of himself and others by continuing to indulge in physical outbursts of anger. In addition, his insubordination and abusive language to a supervisor informing him of disciplinary action is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 26, 2005, reference 01, is reversed. Timothy Haege is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,220.00.

bgh/kjw