

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

MERLE A POTTORFF  
2119 E 13<sup>TH</sup> ST  
DES MOINES IA 50316

OVERHEAD DOOR CO  
OF DES MOINES INC  
PO BOX 3565  
DES MOINES IA 50322

Appeal Number: 04A-UI-09355-SWT  
OC: 08/08/04 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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 26, 2004, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on September 23, 2004. The parties were properly notified about the hearing. The claimant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. James McNabb participated in the hearing on behalf of the employer with a witness, Jeff Barnett.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer/shop helper from July 30, 2001, to August 9, 2004. James McNabb is the president of the company. Jeff Barnett is the general manager. The claimant had been warned by McNabb about his conduct in early August 2004

when he raised his voice at Barnett after had informed the claimant about the need to retain receipts for any purchases he made.

The claimant and a co-worker, Ryan Park, were on vacation prior to August 9, 2004. While they were gone, the employer discovered a garage door in the grass between two warehouses. This was reported to the police because the employer believed someone was in the process of stealing the garage door. Other employees were questioned by the police at work, but since the claimant and Ryan were not at work, the police sent them a letter stating that they wanted to talk to Ryan and the claimant.

On August 9, 2004, the claimant and Ryan came into the office with the letters. Barnett was on the phone when they came in. When the claimant began waiving the letter, Barnett raised his hand to get them to wait until he was off the phone. Ryan and the claimant then noisily went into McNabb's office and the claimant slammed the door behind him. Ryan threw the letter on McNabb's desk, and he and the claimant sat down. McNabb was on the phone speaking with a customer. After he got off the phone, they asked him about the letters and accused McNabb of singling them out. McNabb explained that they got letters because they were not in town when the police questioned other employees. McNabb then discharged both of them for insubordination based on their conduct in barging into his office and slamming the door.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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's conduct on August 9, 2004, was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 26, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/tjc