

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TIMOTHY J KYARSGAARD
Claimant

APPEAL NO. 07A-UI-11133-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BE & K CONSTRUCTION COMPANY
Employer

**OC: 11/04/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Kyarsgaard filed an appeal from a representative's decision dated November 27, 2007, reference 01, which denied benefits based upon his separation from BE & K Construction Company. After due notice was issued, a hearing was held by telephone on December 17, 2007. Mr. Kyarsgaard participated personally and the employer participated by Maggie McNitt, Office Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from June 25, 2007 until October 18, 2007 when he was discharged from employment. The claimant worked as a full-time maintenance mechanic assistant and was paid by the hour. The claimant was discharged from employment after making angry insubordinate statements to his immediate supervisor on or about October 18, 2007. On that date the claimant was late in reporting to his work area due to a delay in transportation from a nearby parking lot. When the claimant's supervisor inquired as to why Mr. Kyarsgaard had not reported on time, the claimant became angry and directed inappropriate statements to his immediate supervisor. As the claimant had been previously warned for similar conduct, a decision was made to terminate him from his employment. The claimant was aware based upon his previous warnings that conduct of that nature in the future would result in his termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does. The evidence in the record establishes that the claimant had previously been warned for inappropriate conduct and was

aware that acting inappropriately or directing inappropriate language to his supervisor in the future would result in his termination from employment. When the claimant's supervisor questioned Mr. Kyarsgaard as to why he was reporting late on October 18, 2007, the claimant became angry and once again directed inappropriate language to his supervisor resulting in his termination from employment.

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.

For the reasons stated herein, the administrative law judge finds: The claimant was discharged for misconduct. Benefits are withheld.

DECISION:

The representative's decision dated November 27, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs