

**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**

**VINCENT R THOMAS  
3504 – 27<sup>TH</sup> PL  
DES MOINES IA 50310**

**METRO WRECKING AND EXCAVATING  
INC  
1704 E EUCLID  
DES MOINES IA 50313**

**Appeal Number: 05A-UI-00592-S2T  
OC: 12/26/04 R: 02  
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Metro Wrecking and Excavating (employer) appealed a representative's January 13, 2005 decision (reference 01) that concluded Vincent Thomas (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2005. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Mike Berst, General Superintendent. Exhibit D-1 was admitted into evidence.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 3 until October 15, 2004. The decision now being reviewed by the administrative law judge is simply a duplicate of a decision dated November 16, 2004, reference 02. The claimant's appeal from the decision dated January 13, 2005 has been adjudicated in appeal number 05A-UI-00591-S2T. The decision found in appeal number 05A-UI-00591-S2T is controlling regarding the issue under review.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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 separation from employment is an issue that has been adjudicated in appeal number 05A-UI-00591-S2T. Therefore, it is unnecessary to issue a duplicate decision. The

decision found in appeal number 05A-UI-00591-S2T will be controlling regarding the issue of the claimant's separation from employment.

DECISION:

The representative's January 13, 2005 decision (reference 01) is affirmed. The issue involving the claimant's separation from employment has been adjudicated in appeal number 05A-UI-00591-S2T, and that decision will be controlling in this matter.

bas/pjs