

**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**

**DARREL J NYE  
1817 E AVE NE  
CEDAR RAPIDS IA 52402**

**J & A PRINTING INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-03202-RT  
OC: 02-15-04 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, 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, J & A Printing, Inc., filed a timely appeal from an unemployment insurance decision dated March 15, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Darrel J. Nye. After due notice was issued, a telephone hearing was held on April 13, 2004 with the claimant participating. Kevin Schlotterbeck, Plant Manager, and Rick Hook, Warehouse Manager, participated in the hearing for the employer. The employer was represented by Jannette Jarvis of Employers Unity, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibits 1 and 2 were admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time warehouse laborer from July 1, 1997 until he was separated from his employment on February 19, 2004. On February 18, 2004, the claimant was moving a skid of paper or a pallet of paper and spilled the paper dropping approximately 1,000 sheets. The claimant did not immediately pick up the paper. He had other things to do and then ultimately forgot about picking up the paper and did not do so and went home for the evening. The next day when the claimant arrived he was admonished about this by his supervisor, Rick Hook, Warehouse Manager and one of the employer's witnesses. The claimant got upset and in the course of the discussion told Mr. Hook that he was "full of shit" and also used the word "hell." Mr. Hook did not use profanity to the claimant. Mr. Hook tried to calm the claimant down but was unable to do so completely. The claimant picked up the paper and punched out and left work early.

Later that day, February 19, 2004, the claimant returned to work and spoke to Kevin Schlotterbeck, Plant Manager and one of the employer's witnesses. The claimant asked if he could be reassigned to another position. Mr. Schlotterbeck informed the claimant that that was not his decision but it was up to the owner. He told the claimant to go home and that he would get back to him. The claimant went home and attempted to call Mr. Schlotterbeck a couple of times without success. The employer then sent the claimant a letter dated February 19, 2004, which informed the claimant that he had been terminated.

The employer has policies in its employee manual as shown at Employer's Exhibit 1 prohibiting insubordination and leaving work before the end of a workday and abusive or obscene language. The claimant received a copy of this and signed an acknowledgement. On February 3, 2004, the claimant was given a written warning as shown at Employer's Exhibit 2 warning him for insubordination when he had a confrontation again with Mr. Hook over a meeting that the claimant was asked to attend. Mr. Hook asked the claimant to go to a meeting but the claimant did not do so right away because he had other things to do and after doing those things he stopped to get a cup of coffee and then went to the meeting where the confrontation arose and the claimant walked off again but did not leave the premises but went back to work.

Pursuant to his claim for unemployment insurance benefits filed effective February 15, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,356.00 as follows: \$339.00 per week for four weeks from benefit week ending March 20, 2004 to benefit week ending April 10, 2004. For benefit week ending February 21, 2004, the claimant received no unemployment insurance benefits reporting wages and vacation pay sufficient to cancel benefits for that week.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. 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 first issue to be resolved is the character of the separation. The employer maintains that the claimant left his employment voluntarily when he walked off the job on February 19, 2004. The claimant maintains that he was discharged when he received a letter dated February 19, 2004 informing him that he was terminated. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily. The employer's witnesses testified that the claimant punched out and left work early on February 19, 2004 because he was upset over a discussion with his supervisor, Rick Hook. The claimant concedes that he did so. However, the administrative law judge does not believe that this both demonstrates an intention to terminate the employment relationship and is an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's actions thereafter belie a voluntary quit. The claimant returned to the employer later that day and spoke to the plant manager, Kevin Schlotterbeck, one of the employer's witnesses, and asked him if he could have another position at the employer. This does not indicate that the claimant had voluntarily quit. Mr. Schlotterbeck told the claimant to go home and that the employer would get back to him. The next communication the claimant

received was a letter dated February 19, 2004 informing him that he had been terminated. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant did not leave his employment voluntarily but was discharged upon receipt of the letter dated February 19, 2004.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The evidence really is not in real dispute. On February 18, 2004, the claimant spilled a large amount of paper which he then did not pick up that day. The claimant testified that he forgot to do so but the administrative law judge is not convinced that this is credible. In any event, the claimant came to work the next day and was admonished by his supervisor, Rick Hook, Warehouse Manager, and one of the employer's witnesses. At that point, the claimant became very upset and used profanity referring to Mr. Hook as "full of shit" and using the word "hell." The claimant first testified that he did not recall using those words but later conceded that he did "cuss." Mr. Hook testified, and the claimant agreed, that Mr. Hook did not use profanity to the claimant. The claimant, after cleaning up the paper, clocked out and went home without permission. This occurred just a little over two weeks after the claimant had received a written warning for insubordination as shown at Employer's Exhibit 2 for having another confrontation with Mr. Hook. The employer's policies at Employer's Exhibit 1 clearly prohibit insubordination, leaving work before the end of a workday, and abusive or obscene language. The administrative law judge concludes that the claimant was insubordinate, used obscene language and left the job before the end of the workday. Because of the employer's rules and the claimant's recent warning, the administrative law judge is constrained to conclude that claimant's behavior were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Even should the claimant's separation be considered a voluntary quit, the administrative law judge would conclude that the claimant left his employment voluntarily without good cause attributable to the employer. The evidence establishes that the claimant was reprimanded and left after the reprimand. Leaving work after being reprimanded or because of a personality conflict with his supervisor is not good cause attributable to the employer. See 871 IAC 24.25(22 and 28). Therefore, even should the claimant's separation be considered a voluntary quit, the administrative law judge would conclude that the claimant would still be disqualified to receive unemployment insurance benefits because he left work voluntarily without good cause attributable to the employer.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,356.00 since separating from the employer herein on or about February 19, 2004 and filing for such benefits effective February 15, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of March 15, 2004, reference 01, is reversed. The claimant, Darrel J. Nye, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits because he was discharged for disqualifying misconduct. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,356.00.

tjc/b