

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

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Appeal Number: 04A-UI-09293-SWT
OC: 07/25/04 R: 04
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, 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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 17, 2004, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 22, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with witnesses, Bill Stevens, Mike Helmick, and Rick Hartman. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as an overnight stocker from June 11, 2002 to July 28, 2004. The claimant was informed and understood that under the employer's work rules, he was required to practice good personal hygiene and his dress and appearance were to be neat and clean at all times. On June 11, 2004, the claimant received a final written warning for failing to

practice good personal hygiene because he was reporting to work with an offensive odor. The claimant had been verbally warned about this previously and had been sent home. The claimant attributed the odor to his father's vehicle that he used to get to work. The claimant's father raises dogs and transports them in his vehicle. The claimant was given some products to clean the vehicle. He was informed that if he reported to work with an offensive odor again, he would be terminated.

On July 28, 2004, the claimant again reported to work with an offensive odor. The claimant had showered but had not made sure that the clothes he wore to work were freshly laundered. He also used his father's vehicle again. The odor was very noticeable to managers and other employees. The claimant was discharged for violating the employer's work rules and the warning that he had received on June 11, 2004.

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 violation of a known work rule 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. The claimant had been warned and should have taken steps to make sure that he complied with the employer's dress and grooming code. The fact the odor was due to the dogs in his father's vehicle rather than body odor does not excuse 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 17, 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