

**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**

**SHANE M HICKEY
APT 807
1215 – 7TH AVE
CAMANCHE IA 52730-1243**

**CUSTOM-PAK INC
86 – 16TH AVE N
CLINTON IA 52732**

**Appeal Number: 06A-UI-03039-HT
OC: 02/26/06 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, Shane Hickey, filed an appeal from a decision dated March 10, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 4, 2006. The claimant participated on his own behalf. The employer, Custom-Pak, participated by Human Resources Coordinator Andrea Lawrence and Maintenance Supervisor Tim Arvolla. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shane Hickey was employed by Custom-Pak from

July 10, 1995 until February 23, 2006. At the time of separation he was a full-time maintenance person. The claimant was originally hired at the DeWitt, Iowa, plant where he attended an orientation at the beginning of his employment. This orientation covered the employer's rules and regulations including the clock-in and clock-out procedures. Employees may not leave the building during their paid 15-minute break. They may leave during the lunch break but only if they clock out.

During the course of his employment Mr. Hickey transferred to the Clinton, Iowa, facility and became a maintenance person. His supervisor, Tim Arvolla, gave him a number of verbal warnings about various problems from attendance, to poor work performance, to complaints by co-workers that he attempted to shift the blame to someone else whenever he made a mistake.

On February 22, 2006, the claimant was seen during his paid break driving around the building, first as a passenger in someone else's vehicle, then driving that same vehicle. The matter was reported by the sales representative and facilitator who witnessed it and the matter was referred to Human Resources Coordinator Andrea Lawrence. She took statements from the witnesses then discussed the claimant's situation with supervisors and managers.

The employee whose vehicle the claimant was riding in and then drove was discharged because he had been warned the week before about the need to punch out if he left the building. The claimant was also discharged based on his past disciplinary history. He was advised of the discharge on February 23, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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 claimant had been told of the employer's clock-in and clock-out policies at the time of hire when he attended the orientation. Although he moved to a different facility he had no cause to believe that those policies differed as he did not change employers, only locations. He was not to leave the facility during the paid breaks.

In spite of the knowledge of that policy, he ignored it in order to go with another employee to move that employee's vehicle. Mr. Hickey has not established any necessity for him to go along as the other worker was perfectly capable of driving his own vehicle without assistance. This was a violation of a known company rule. Although it may not have been substantial misconduct sufficient to warrant discharge, in conjunction with all the other warnings he received, it was sufficient to establish a pattern of deliberate violations of company rules, job performance standards and attendance. The claimant is disqualified.

DECISION:

The representative's decision of March 10, 2006, reference 01, is affirmed. Shane Hickey is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/kkf