

**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**

**MICHAEL L ELLIFRITT
2320 SE FIFTH ST
DES MOINES IA 50315**

**BOWLERAMA LANES LTD
7205 DOUGLAS
URBANDALE IA 50322**

**Appeal Number: 04A-UI-00580-R
OC: 12-07-03 R: 02
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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Michael L. Ellifritt, filed a timely appeal from an unemployment insurance decision dated January 9, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, on February 16, 2004, with the claimant participating. Dan Bobenhouse, Owner, and Richard Harwood, Mechanic, participated in the hearing for the employer, Bowlerama Lanes Ltd. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a part-time mechanic from August 8, 2002 until he was discharged on December 1, 2003. At the end of his employment, the claimant was averaging between 20 and 30 hours per week. The claimant was discharged for leaving the employer's premises or building while on duty and during working hours and while the employer was busy with leagues. As a mechanic, the claimant is responsible to be in the back of the bowling alley to tend to the pin setters and answer any ball calls when a ball is stuck. On November 28, 2003, the claimant left the building by leaving through the back door and placing a rag in the back door so that it would not close. This door is usually closed and, when it is closed, it is impossible to open from the outside. The claimant left the door open and exited the building and got into the car of a friend. He sat in the car two or three minutes and then had his friend drive him around to the front of the building where the claimant then checked on his car and then apparently returned to the back of the building and by that time someone else had removed the rag so the claimant could not enter the building that way and went back in through the front.

The claimant worked the next day, November 29, 2003, while the employer was completing its investigation and then was discharged on December 1, 2003. Occasionally the claimant would exit the building to take out trash or perhaps for other reasons but this did not occur when the employer was busy and there was a possibility that there would be ball calls or a problem with the pin setter. While the claimant was absent from the building on November 28, 2003, a ball call came up and there was no mechanic on duty to answer the ball call. However, the employer's witness, Richard Harwood, Mechanic, was at the employer's premises as a customer and answered the ball call and went to the back of the bowling alley and noted that the claimant was not present. He further noted the rag was placed in the door to keep the door open and removed the rag and closed the door. He looked for the claimant and could not find him in the back. Romeo Basconcillo, an employee who was working in the front of the bowling alley, tried to call the claimant about the ball call using the walkie-talkie and, although the walkie-talkie was working that night, he was unable to reach the claimant and Mr. Harwood had to tend to the ball call. The claimant was observed sitting in the car for about five minutes and then pulling out of the parking space and driving away by Mike Pagel, the security man on duty who worked for M P Security providing security for the employer.

The employer has an understood rule that when on duty one is not to leave the premises without permission. The claimant left the premises herein, at least the building, without permission and without informing anyone. The claimant had never received any related warnings or disciplines nor had he ever been accused of such behavior before and there was no other reason for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It 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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, 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 employer's testimony and that of the claimant is remarkably similar. On November 29, 2003, while the employer was busy with leagues, the claimant left the building while he was the only mechanic on duty for approximately six to ten minutes. The claimant was a mechanic for the employer and it was his responsibility to tend the pin setters in the back and answer ball calls when a bowling ball was stuck in a return. The employer has an understood rule that when on duty, an employee is not to leave the premises, especially when the employer is busy. Nevertheless, the claimant did so. While the claimant was gone, a ball call arose and the employer had no one to answer the ball call. It was lucky for the employer that another employee, Richard Harwood, Mechanic, happened to be bowling at the employer as a customer and was able to answer the ball call. Mr. Harwood also checked and could not find the claimant anywhere. When the claimant left the building, he placed a rag in the back door to keep the back door open so that he could reenter the back door, but then according to

his own testimony, he got in the car and then drove around to the front of the building leaving the back door not guarded. When the back door is closed, no one is able to get in from the outside. The claimant testified that he did leave the building sometimes to take out trash or work on his car but the employer's testimony demonstrates that this was only permitted when the employer was not busy and there was no chance of a ball call such as on November 28, 2003. The claimant testified that he rode around the building with his friend to check on his car but this is really not credible. The claimant testified that he did not park in the back because the automobile was safer in front and if it was safer in front then the claimant did not need to check on his automobile.

The claimant testified that he left the building to visit with a friend who was leaving. He got a phone call from his friend and the friend asked him to come outside. The administrative law judge understands why the claimant might want to see his friend but he could have stood at the back door and talked to the friend for a few minutes without leaving the building and he could have answered the ball call. The claimant chose not to do that. Rather, the claimant chose to prop the door open with a rag, enter the car of his friend, and then drive off at least to around the front of the building leaving the door unprotected and failing to answer a ball call. The administrative law judge is constrained to conclude that the claimant's behavior here was a deliberate act or omission constituting a material breach of his duties and evinces a willful or wanton disregard of his employer's interests and is 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.

DECISION:

The representative's decision of January 9, 2004, reference 01, is affirmed. The claimant, Michael L. Ellifritt, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

tjc/b