

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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NORTHWESTERN PLASTICS LTD
INDUSTRIAL SERVICE CORP
C/O L TICKEL
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BURLINGTON IA 52601-9998

Appeal Number: 04A-UI-11696-SWT
OC: 10/03/04 R: 04
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, 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 employer appealed an unemployment insurance decision dated October 22, 2004, reference 01, that concluded the claimant was forced to resign or be discharged. A telephone hearing was held on November 22, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda Tickel participated in the hearing on behalf of the employer with a witness, Dennis Meierotto. Exhibits One through Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from June 30, 2003, to September 29, 2004. Dennis Meierotto, the transportation manager, was the claimant's supervisor. The claimant received a written warning on August 30, 2004, because he had reported to work in the morning on August 27 and packed up his tools and left work. The

claimant was moving to a different department, which would not have required him to use his tools. He had understood that he had the day off as a vacation day. On September 17, the claimant had received a written warning because he had missed work on September 13 due to his daughter's medical appointment but he had not supplied a medical excuse covering the absence.

On September 29, 2004, Meierotto saw the claimant on the phone and believed the claimant was taking a personal phone during working hours, which was not true. Meierotto prepared a third written warning for making personal phone calls during working hours. He also had a voluntary resignation form with him when he asked to speak with the claimant. He took the claimant outside away from the plant and presented him with the written warning. He presented both the written warning and resignation form to the claimant. The claimant had been doing some testing for future employment with Case-New Holland Company and had told Meierotto about it. Meierotto told the claimant that if he did not sign the resignation form, he would get a poor recommendation if Case-New Holland called. The claimant believed that Meierotto intended to terminate him if he did not sign the resignation so he signed the resignation form and left the plant.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the Meierotto had the resignation form with him when he spoke to the claimant and presented it to him before the claimant said anything about resigning. The claimant reasonably believed he was going to be discharged if he did not resign.

A forced resignation is the equivalent of a discharge for unemployment insurance purposes. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law in 871 IAC 24.32(1)a has not been established in this case. The employer has not proven the claimant was making a personal phone call on September 29 or committed any other act of misconduct.

DECISION:

The unemployment insurance decision dated October 22, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc