

**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**

**IVAN V BRANDT
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NEW HARTFORD IA 50660**

**KWS INC
1127 LINCOLN ST
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CEDAR FALLS IA 50613**

**Appeal Number: 06A-UI-01401-H2T
OC: 12-04-05 R: 03
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 30, 2006, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on February 22, 2006. The claimant did participate. The employer did participate through Chris Knapp, office Manager and Kevin Martin, Vice President/Project Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a laborer, full time, beginning July 7, 2004 through January 10, 2006 when he was discharged.

When the claimant was hired, he was told that he had to travel out of town for work. The claimant, on his employment application, indicated that he was willing to travel out of town. The claimant had traveled out of town on many occasions in the past. The claimant did not want to work out of town any more because his wife was having physical therapy and on medication. The claimant asked to work in town while his wife was recovering. The claimant had been accommodated for a short period of time in December, after his wife had surgery. The claimant worked in town until he found out that the out of town jobs were paying more money. The claimant then asked to be and was assigned to work out of town again.

On January 10 the claimant asked to work on an in-town assignment. Mr. Martin told him that there was no in-town work available for him and that his assignment was out of town. The claimant refused to work out of town and was discharged. The claimant had been warned on December 5 about his refusal to work out of town. The claimant did not ask for an unpaid leave of absence he asked to be laid off, which the employer refused to do since there was work available that needed to be completed.

The employer is not covered by the FMLA as they do not have fifty employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the right to allocate its personnel in accordance with its needs and available resources. The claimant was hired with the understanding that he would work out of town when needed. He had previously worked out of town on many occasions. The claimant's wife's medical condition, while unfortunate, does not require the employer's accommodation. The employer allowed the claimant to remain in town for a short period of time, until the claimant himself asked to be sent out of town again. When the claimant refused to go out of town, a normal job requirement, he was discharged. His refusal is misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The January 30, 2006, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/s