

**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**

**JOSEPH B POWERS
108 PRAIRIE CREEK DR
GRIMES IA 50111**

**GARNER PUBLISHING CO
c/o TALX UCM SERVICES CO
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03247-DWT
OC 02/22/04 R 02
Claimant: Respondent (2)**

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 are 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:

Garner Publishing Company (employer) appealed a representative's March 18, 2004 decision (reference 01) that concluded Joseph B. Powers (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2004. The claimant participated in the hearing. Matt Coltharb, the president, Rick Carter, Walt Manning, Shelly Goaley, Dan Baker and Kyle Rhoades participated in or observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons qualifying him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 21, 1995. He worked full time on the third shift assembly press. Carter was the claimant's immediate supervisor.

Prior to February 19, 2004, the claimant's job was not in jeopardy. On February 18, Carter gave the claimant the choice of working on ballots or racks. The claimant opted to work on ballots. On February 19, 2004, the claimant had a migraine headache but still went to work. The claimant thought he could work on some projects instead of calling in sick.

After the claimant reported to work, he made a comment that he did not feel well. Carter did not hear the claimant say this and the claimant did not tell Carter he had a headache. When Carter told the claimant he would have to work on ballots again that night because it was a priority, the claimant told him he would not. The claimant did not explain to Carter why he would not work on ballots, he told Carter he refused to do any ballot work that evening. The claimant told Carter he planned on doing other projects that night. Carter told the claimant to go home if he refused to work on ballots that shift. The claimant went home.

When Coltharb got to work the next morning, he learned the claimant had been insubordinate toward Carter and had walked off the job during his February 19 shift. The claimant told Coltharb he had left work because he had not felt well.

The employer discharged on the claimant on February 20, 2004. Even though the claimant had not previously refused to do any work and not been insubordinate before February 19, the employer discharged the claimant for walking off the job and refusing to do the assigned work on February 19, 2004.

The claimant established a claim for unemployment insurance benefits during the week of February 22, 2004. The claimant has not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's conduct on February 19, 2004, rises to the level of work-connected misconduct. The employer made a business decision that getting ballot work done was a priority the night of February 19. The claimant substantially disregarded the employer's interests when he refused to do ballot work during his shift.

The claimant's assertion that he refused to work on ballots because he had a migraine is undercut by the fact he never told Carter he had a headache. The claimant did not tell anyone in management he did not feel well on February 19 until Coltharb called him on February 20, 2004. Since the claimant did not tell Carter he had a headache on February 19, a preponderance of the evidence does not establish that the claimant had a headache or a reasonable excuse for refusing to do the ballot work that night. The claimant's conduct on February 19 amounts to work-connected misconduct. As of February 22, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 18, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 22, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf