

**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**

**ROBERT ROBERTS
302 – 5TH AVE
CHARLES CITY IA 50616**

**WOODHARBOR MOLDING & MILLWORK
3277 – 9TH ST SW
MASON CITY IA 50401**

**Appeal Number: 04A-UI-02208-ET
OC: 02-01-04 R: 02
Claimant: Appellant (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 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 February 24, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 18, 2004. The claimant participated in the hearing. Patty Holmgaard, Human Resources Director, Betty Gauley, Cabinet Department Lead and Wade Anderson, Supervisor, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general production worker in the finish department for Woodharbor Molding & Millwork from April 30, 2001 to January 22, 2004. On January 20, 2004, the employer told employees to follow the yellow lines designating routes they should take while entering and exiting the building or going on break. The employer wanted employees to walk around the "finals" area instead of cutting through the department. When the claimant left for the day January 20, 2004, he started walking through the finals department and when Cabinet Department Lead Betty Gauley told the claimant he could not cut through the area he stated, "I don't give a fuck. You can write me up if you want and you can also give me a day off without pay but no one is going to tell me how to get out of this place." Ms. Gauley reported the situation to the employer and Human Resources Director Patty Holmgaard terminated the claimant's employment January 22, 2004. The claimant denies making the comments reported by Ms. Gauley. The claimant received a warning July 25, 2002, for displaying a negative attitude toward his supervisor and others.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 burden of proving disqualifying job misconduct. 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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Although the employer told employees not to cut through the finals department the claimant disregarded the employer's instructions and cut through the area on his way out of the plant. When Ms. Gauley reminded him not to cut through the claimant responded with profanity and statements indicating he did not care what disciplinary action the employer imposed but it could not tell him how to leave the building. The claimant's actions January 20, 2004, were inappropriate, unprofessional and insubordinate. This was an isolated incident, however, and as such it does not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The February 24, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf