

**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**

**JORDAN C BULANEK
406 N 12TH AVE
MARSHALLTOWN IA 50158**

**LENNOX MFG INC
PO BOX 250
MARSHALLTOWN IA 50158**

**Appeal Number: 05A-UI-06239-DT
OC: 05/22/05 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

STATEMENT OF THE CASE:

Jordan C. Bulanek (claimant) appealed a representative's June 6, 2005, decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Lennox manufacturing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2005. The claimant participated in the hearing. Kellie Shollenbarger appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 13, 1993. He worked full time as a trades helper in the maintenance department of the employer's heating and air conditioning manufacturing business. His last day of work was April 28, 2005. The employer discharged him on May 17, 2005. The reason asserted for the discharge was excessive unapproved absenteeism.

The claimant had some prior unexcused absences, including March 1 and March 3, 2005. He had an approved FMLA (Family Medical Leave) covering March 14 through April 1, 2005. He returned to work, but then put in a request for a personal leave of absence for April 7 through April 25, 2005. The employer denied the request, but the claimant was unaware of the denial until after he returned to work on April 26, 2006. He received a warning for the unauthorized absence. He worked on April 26, April 27, and April 28, 2005. He was scheduled to work May 1 and May 2, 2005, but was a no-call/no-show. He was scheduled to work on May 3, 2005, but did not report for work. He had suffered a finger puncture and went to the emergency room. The emergency room doctor gave him a doctor's note indicating he could return to work on May 4, 2005. However, the claimant did not provide the note to the employer until May 9, 2005, and he did not call or report for work on May 4, May 5, or May 8, 2005.

On May 5, 2005, the employer sent the claimant a letter giving him a second warning regarding his attendance and advising him that future absences for future business would not be authorized and that absences for sickness must be properly documented. The claimant received that letter on May 13, 2005. The claimant did not call or report for work in the interim from May 9 through May 13, 2005. The claimant asserted that he had obtained a medical certification for FMLA to cover him through May 12, 2005, theoretically for the finger injury. However, the employer asserted that it had not received any such FMLA certification, and the claimant acknowledged that, at best, he did not seek to present it to the employer until on or about May 17, 2005, by which time the employer had already determined to separate the claimant. The claimant did not provide direct evidence of any FMLA certification in the appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's final absence was not excused and was not due to properly reported or documented illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 6, 2005, decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 17, 2005. 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.

ld/kjw