

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SHAMUS L TERWILLIGER**  
Claimant

**APPEAL NO. 08A-UI-07192-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARILLA AMERICA INC**  
Employer

**OC: 06/29/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 30, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Stacey Cale participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a maintenance technician for the employer from October 2, 2006, to June 23, 2008. The claimant assisted some other employees in building a device that could be used to collect hydrogen. He cut some scrap tubing that was used in the device. He did this during working hours. There was no work-related purpose for the device. The claimant was also present when the employees ignited the collected hydrogen, which popped when it was lit. This was also done during work hours. The claimant never reported what he had done or what he had witnessed to a supervisor.

After the employer discovered the device and investigated the incident, the claimant was discharged for his participation in building the device and allowing the coworkers to ignite the collected hydrogen.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the

employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated July 30, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css