

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

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Appeal Number: 04A-UI-06349-ET  
OC: 01-18-04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 26, 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 July 2, 2004. The claimant participated in the hearing with Attorney Patrick Carpenter. Jamie Gibson, Coordinating Group Manager on Second Shift, Brad Harris, Production Manager, and John Murphy, Group Manager, participated in the hearing on behalf of the employer with Senior Corporate Counsel Rob Sturm. Employer's Exhibits One and Two were admitted into evidence.

#### 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 laborer in the shipping department for Jeld-Wen from March 7, 1994 to May 12, 2004. On May 11, 2004, Coordinating Group Manager Jamie Gibson and Group Manager John Murphy, saw the claimant leave the plant with a box and walk across a grassy area to the parking lot rather than using the ramp. They approached the claimant and asked what was in the box and the claimant indicated he had wood and shipping straps. They asked why he had the straps and the claimant stated he was going to use them to tie down his son's motorcycle the following day when he took it in for repair and that he intended to return them when he reported for work the next night. The employer let him leave with the straps and instructed him to bring them back the next day and put them on a desk. The claimant reported for work May 12, 2004, and put the straps on the dock. A few minutes later he was paged to Production Manager Brad Harris' office and informed his employment was terminated. In April 2003 Mr. Gibson saw the claimant leaving the window storage area in his van. Mr. Gibson asked the claimant what he was doing and the claimant said he was locking up. Mr. Gibson asked if he had windows in the van and the claimant first said he did not and then stated he did and was taking them back to the plant. Mr. Gibson reported the situation to Mr. Harris because he was suspicious that the claimant was in his personal van 15 minutes after clocking out. Mr. Harris met with the claimant to discuss the incident and the claimant stated he broke two windows earlier but did not have room on his forklift so he returned in his van to get two more windows after clocking out because overtime was not allowed. Mr. Harris gave the claimant the "benefit of the doubt" and did not take any disciplinary action against the claimant.

#### 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). The employer made the decision to terminate the claimant's employment prior to learning whether he returned the straps and apparently discharged him for failing to secure permission to use the straps. While the claimant should have asked permission before taking the shipping straps, he credibly testified that he borrowed them for use in transporting his son's motorcycle and intended to bring them back the next day. His testimony regarding the windows was likewise plausible. Consequently, the administrative law judge cannot conclude the claimant intended to steal from the employer on either occasion and, therefore, the employer has not met its burden of proving that the claimant's actions rise to the level of disqualifying job misconduct. Benefits are allowed.

#### DECISION:

The May 26, 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/b