

**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**

**JAMES J SHARKEY
1363 TULIP AVE
RIVERSIDE IA 52327**

**ALLIED CONSTRUCTION SERVICES
2122 FLEUR DR
PO BOX 937
DES MOINES IA 50304**

**Appeal Number: 06A-UI-07737-CT
OC: 06/25/06 R: 03
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 for Misconduct

STATEMENT OF THE CASE:

James Sharkey filed an appeal from a representative's decision dated July 24, 2006, reference 02, which denied benefits based on his separation from Allied Construction Services (Allied). After due notice was issued, a hearing was held by telephone on August 17, 2006. Mr. Sharkey participated personally. The employer responded to the notice of hearing but neither designated witness was available at the numbers provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sharkey was employed by Allied from April 27 until May 23, 2006 as a full-time carpenter's apprentice. He was discharged because the employer felt he was loafing on the job. Prior to May 23, there were two occasions on which Mr. Sharkey had to be re-directed by his foreman. On one occasion, he was standing waiting for the elevator and was told to use the stairs rather than wait. On another occasion, he was looking for water and was told to get back to work.

On May 23, Mr. Sharkey was removing steel studs and placing them in a cart. A coworker went to find another cart but was gone for an extended period of time. When he failed to return, Mr. Sharkey went to look for the cart himself. The foreman felt he was being inattentive to his duties and discharged him. Mr. Sharkey was at all times working to the best of his abilities and performing work as assigned.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sharkey was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Sharkey was discharged for loafing on the job. However, the allegation has not been supported by specific details. On one occasion, he was waiting for an elevator and on another he was looking for water. He had sound reasons for not being actively working on both occasions. On the final occasion that prompted his discharge, he was looking for a cart to use in his work. The employer failed to establish that he was doing something other than looking for a cart.

The employer failed to participate in the hearing to offer evidence to support its contention that Mr. Sharkey should be disqualified from receiving benefits. The evidence failed to establish that he deliberately and intentionally acted in a manner he knew or should have known was contrary to the employer's standards. For the reasons cited herein, it is concluded that the employer has failed to satisfy its burden of proof. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 24, 2006, reference 02, is hereby reversed. Mr. Sharkey was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs