

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN M DAVIS

Claimant

APPEAL NO: 12A-UI-08058-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAPETTI'S OF IOWA

Employer

OC: 05/27/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 27, 2012, reference 01, that held he was discharged for misconduct on May 24, 2012, and benefits are denied. A telephone hearing was held on July 30, 2012. The claimant participated. Auby Ninemire, HR representative, and Mark Ensign, Production Manager, participated for the employer. Employer Exhibits 1 and 2 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time machine box operator on September 12, 2008, and last worked for the employer on May 24, 2012. The claimant received the employer break policy that allows 30 minutes for lunch and two 10-minute breaks each day.

The employer issued claimant a 3-day suspension for May 15 -17, 2012 and a final warning for taking excessive breaks. Recently, he had taken a 50-minute lunch break with two 20-minute breaks in one day. He was put on notice that a further violation could lead to termination.

Claimant took a 40-minute lunch and 25-minute bathroom break on May 24. He was discharged for taking excessive breaks. Although claimant has a bowel health condition, he did not provide this as an excuse to the employer for taking excessive breaks.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on May 24, 2012, for a repeated violation of company break policy.

The claimant knew the employer break policy due to a prior warning and suspension, and his repeated violation for the same offense constitutes job disqualifying misconduct. The employer denies claimant provided medical information to excuse his taking breaks due to a bowel problem and he failed to provide that information for the hearing. Good cause for taking excessive breaks is not established.

DECISION:

The department decision dated June 27, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on May 24, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css