

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES D WAGG
Claimant

APPEAL NO. 13A-UI-01916-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 01/06/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 7, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 14, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Deneice Norman participated in the hearing on behalf of the employer with witnesses, Doug Baker and Kevin Young. Exhibits A-1, One, Two, and Three were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a utility worker from July 24, 1995, to January 8, 2013. He understood that the employer did not use treated lumber for any projects.

On December 13, 2012, the claimant purchased treated lumber from Menards and charged it to the employer. The claimant took the lumber for himself. The receipt, order form, and pick ticket all show the lumber purchased was treated.

The claimant was on vacation from December 17, 2012, to January 7, 2013. On December 26, 2012, the employer received an anonymous message stating that the claimant had taken lumber paid for by the employer and used it for a personal project. When the claimant returned from vacation, he was questioned about the lumber. He insisted that he had picked out untreated lumber and had stored it at work. The lumber, however, could not be found.

On January 8, 2013, the employer discharged the claimant for taking lumber purchased by the employer.

An unemployment insurance decision was mailed to the claimant's last-known address of record on February 7, 2013. The decision concluded he had been discharged for work-connected

misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 17, 2013, or the next working day if the date fell on a Saturday, Sunday, or legal holiday. February 17 was a Sunday and February 18 was a legal holiday. The claimant filed his appeal on February 19, 2013.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. The law also provides that the date for appealing is extended if the date falls on a Saturday, Sunday, or legal holiday. Iowa Code § 96.6-2. The appeal was timely in this case.

The next 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence establishes the claimant charged and took the lumber. The claimant's explanation that he took untreated lumber despite all the documentation stating that the lumber ordered, paid for, and picked was treated is not credible. It is also not believable that someone set the claimant up while he was on vacation by taking the lumber he had purchased from where he had left it. Misconduct has been shown in this case.

DECISION:

The unemployment insurance decision dated February 7, 2013, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css