

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD SMUCK**

Claimant

**APPEAL NO: 06A-UI-09422-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENSEN BUILDERS LTD**

Employer

**OC: 08-27-06 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 20, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 9, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing. Brian Harryman, Superintendent, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time laborer for Jensen Builders from April 12, 2006 to August 24, 2006. On August 23, 2006, the claimant was directed to a job site at Camp Dodge. He arrived around 8:00 a.m. and worked until approximately 9:30 a.m. before leaving with two other employees without permission. Superintendent Brian Harryman was notified of the situation around 10:30 a.m. and called one of the employees the claimant left with who had a cell phone but was unable to reach him all day. Mr. Harryman called the claimant's uncle because he was concerned there may have been a family emergency but the uncle told him the family was not experiencing any problems and he did not know where the claimant was. Later that day Mr. Harryman talked to a third employee that left with the claimant and that employee said they went out drinking. On August 24, 2006, Mr. Harryman asked the claimant for an explanation of his absence but the claimant did not offer one and consequently the claimant's employment was terminated.

The claimant has not claimed or received unemployment insurance benefits since his separation from this employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant left the jobsite at 9:30 a.m. with three other employees August 23, 2006, to go drinking. He did not have permission to leave and did not offer any explanation for his actions to the employer. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The September 20, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs