

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

MIKE L HANSEN  
809 S FAIRMOUNT  
SIOUX CITY IA 51106

DESIGN HOMES INC  
PO BOX 239  
PRAIRIE DU CHIEN WI 53821-0239

Appeal Number: 04A-UI-09502-RT  
OC: 08-08-04 R: 01  
Claimant: Appellant (1)

**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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Mike L. Hansen, filed a timely appeal from an unemployment insurance decision dated August 27, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on September 28, 2004, with the claimant participating. Kyle Hamman, Manager, and Tom Jordening, Office Administrator, participated in the hearing for the employer, Design Homes, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time maintenance man in the tool room from March 28, 2003 until he was discharged on August 5, 2004. The claimant was discharged for a violation of the employer's policy regarding safety matters. The employer's policy provides that an employee can be discharged immediately if he does something that puts himself or others at the risk of harm. On August 5, 2004, the claimant was shooting a staple pneumatic gun at a wood box or trashcan between 20 and 28 feet away from him. He shot staples at the box twice. The proper use of such a staple gun or pneumatic nail gun is to place it directly against wood or whatever is being stapled together and then fire it. The claimant fired the gun because he was mad at a coworker and wanted the coworker to hear the nail gun. The claimant knew he was not supposed to do this. That very week the employer had an employee in the hospital because he had been shot with a nail or staple from a pneumatic gun.

On April 8, 2004, the claimant received a written warning for horseplay. On June 17, 2004, and again on September 23, 2003, the claimant received written warnings for failure to wear safety glasses. On July 27, 2004, less than 10 days before the incident in which the claimant shot the staple gun, the employer conducted a safety meeting covering current safety concerns and spent approximately 10 minutes on horseplay and the fact that horseplay would not be tolerated.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties testified, and the administrative law judge concludes, that the claimant was discharged on August 5, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Kyle Hamman, Manager, credibly testified that the claimant was discharged after shooting a pneumatic staple gun at a wooden box or trashcan between 20 and 28 feet from the claimant. The claimant concedes that he did so twice. The claimant testified that he did so because he was mad at a coworker and wanted the coworker to hear the noise. The claimant admitted that he knew he was not supposed to be doing this. Nevertheless, the claimant did it anyway. Just that very week, the employer had an employee in the hospital for being shot with a nail gun or staple gun. Less than 10 days prior to this incident, on August 5, 2004, the employer hosted a safety meeting at which horseplay was discussed for approximately 10 minutes and the employees were told that such horseplay would not be tolerated. The claimant had also received a recent written warning on April 8, 2004 for horseplay and two written warnings as set out in the findings of fact for failure to wear safety glasses. It appears to the administrative law judge that the claimant was well aware of the employer's concern about horseplay and safety.

Because of the warnings the claimant received and the safety meeting coming less than 10 days before the incident, the administrative law judge concludes that the claimant's firing of the pneumatic staple gun at a wooden box at least 20 feet away was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and, at the very least, is carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. The administrative law judge is not unmindful of the serious problem with workplace safety and workplace violence. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

#### DECISION:

The representative's decision of August 27, 2004, reference 01, is affirmed. The claimant, Mike L. Hansen, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

pjs/b