

**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**

**RICKY BRADFIELD
219 OLIVER
WATERLOO IA 50703**

**EAGLE OTTAWA LLC
4455 REMINGTON RD
WATERLOO IA 50703**

**Appeal Number: 05A-UI-08072-RT
OC: 12-26-04 R: 03
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, 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:

The claimant, Ricky Bradfield, filed a timely appeal from an unemployment insurance decision dated August 8, 2005, reference 05, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on August 23, 2005, with the claimant participating. Tracy Keller, Human Resources Generalist, participated in the hearing for the employer, Eagle Ottawa LLC. 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 production worker from August 2, 2004 until he was discharged on July 13, 2005. The claimant was discharged for falsifying pre-employment physical paperwork and a mileage form. When the claimant first applied for the position with the employer, he was given a pre-employment physical on July 29, 2004 and asked to complete some paperwork concerning his medical condition. The claimant answered "no" to the following questions: 1. Have you ever had a ganglion cyst; 2. Have you ever been diagnosed with tendonitis or bursitis of the hand, wrist, or elbow; 3. Have you had any type of problem in your extremities, hands, arms, feet, or legs. Just eight days earlier on July 21, 2004, the claimant was seen by a physician in Iowa City and informed that he probably had a ganglion cyst.

Approximately one year later the claimant was injured at work and filed a workers' compensation claim with the employer. The claimant was sent to Iowa City to visit a doctor and when the employer received the reports from the Iowa City physician on or about July 7, 2005, the reports referred to a history of the present illness and referred to the visit on July 21, 2004. The claimant was then discharged. If the claimant had answered "yes" to the three questions above, the employer's physician would have evaluated the claimant further to determine if the claimant was suitable to work for the employer. This was not done because the claimant answered no to those questions.

The claimant was also discharged for allegedly falsifying a mileage report for his trip to Iowa City and back for his medical examination in July 2005. The claimant claimed 240 miles round trip but the employer believed that the round trip was 166 miles. The claimant did not leave from his home address, which was his mother's address, because the claimant lived with his girlfriend in Greenbriar, on the outskirts of Waterloo, Iowa, and went by the odometer in his automobile in reporting the 240 miles. Pursuant to his claim for unemployment insurance benefits filed effective December 26, 2004 and reopened effective July 10, 2005, the claimant has received no unemployment insurance benefits since separating from the employer. Iowa Workforce Development records do indicate that the claimant is overpaid unemployment insurance benefits in the amount of \$415.00 for 2003.

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).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The parties agree, and the administrative law judge concludes, that the claimant was discharged on July 13, 2005. 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, Tracy Keller, Human Resources Generalist, credibly testified that the claimant was discharged for two reasons, falsifying medical documents in his pre-employment physical and for falsifying a mileage form. Concerning the mileage form, the administrative law judge concludes that the employer has not met its burden of proof to demonstrate by a preponderance of the evidence that the claimant actually falsified his mileage record for the trip from his residence to Iowa City and back for his workers' compensation claim on or about July 7, 2005. The claimant testified that he lived with his girlfriend in Greenbriar on the outskirts of Waterloo and did not drive from his listed address with his mother. He testified that the distance from his girlfriend's residence to Iowa City is much greater than that from his official residence. The claimant testified that he went by an odometer reading. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant deliberately falsified his request for mileage.

Concerning the falsification of the claimant's medical reports during his pre-employment physical, the administrative law judge is constrained to conclude that the claimant did falsify his medical reports and that this falsification was willful and deliberate and did or could result in exposing the employer to legal liabilities or penalties or in placing the employer in jeopardy and that it was material. The evidence establishes that on July 29, 2004, the claimant answered no to three questions on his pre-employment physical paperwork as noted in the findings of fact. One of the questions specifically asked if the claimant had ever had a ganglion cyst and another asked if the claimant had had any types of problems in his extremities including his hands. The claimant answered no to both. Just eight days earlier, on July 21, 2004, the claimant was informed by a physician in Iowa City that he probably had a ganglion cyst because the claimant went to Iowa City for a lump on his wrist. The claimant was fully aware of this doctor's statement at the time he prepared the physical paperwork on July 29, 2004. The administrative law judge must conclude that the claimant's answers to the pre-employment physical paperwork were willfully and deliberately false. The claimant argues that he was told only by his physician that he "probably" had a ganglion cyst. This certainly seems to be a diagnosis to the administrative law judge. The claimant consulted a physician in Iowa City for a lump on his wrist and, therefore, he clearly had a problem in his extremities. Accordingly, the administrative law judge concludes that the claimant willfully and deliberately entered a false statement on his pre-employment physical paperwork.

The administrative law judge further concludes that this false statement did or could result in exposing the employer to legal liabilities or penalties or placing the employer in jeopardy. Clearly, had the claimant answered truthfully to the questions, the employer's physician would have further examined the claimant to determine if the claimant was suitable for work with the employer or exactly what work was suitable for the claimant. The claimant's ultimate workers' compensation claim indicates the potential jeopardy or liability placed on the employer. The administrative law judge does not conclude whether the workers' compensation claim was directly related to the claimant's probable ganglion cyst on July 21, 2004; the administrative law judge leaves that up to the physicians. However, the administrative law judge points out the workers' compensation claim merely to indicate the potential legal liabilities or jeopardy in which the employer is placed by false statements on a pre-employment physical form.

Finally, the administrative law judge concludes that the claimant's false statement was material. In Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991), the Iowa Supreme Court held that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. The court in that case did not define materiality but cited Independent School District v. Hansen, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not material if a truthful answer would not have prevented the person from being hired. The administrative law judge does not believe that materiality depends upon whether the claimant would or would not have been hired. The administrative law judge concludes that it is sufficient to establish materiality if the employer would have acted differently had the individual answered truthfully on the job application. The administrative law judge concludes that here, the employer and the employer's physician would have acted differently and would have further examined the claimant to determine the claimant's suitability for work with the employer had the claimant answered truthfully. The administrative law judge concludes that this satisfies the materiality requirement.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant willfully and deliberately made a false statement on his pre-employment physical paperwork, which false statement could or did result in exposing the employer to legal liabilities or penalties and placing the employer in jeopardy and it was material. Therefore, 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 8, 2005, reference 05, is affirmed. The claimant, Ricky Bradfield, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. Iowa Workforce Development records indicate that the claimant is overpaid unemployment insurance benefits in the amount of \$415.00 from 2003.

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