

**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**

**CHARLES S WILLIAMS
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CORNING IA 50841**

**PAPETTI'S OF IOWA
c/o ADP UNEMPLOYMENT GROUP
TALX UC EXPRESS
PO BOX 66744
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**Appeal Number: 04A-UI-11106-RT
OC: 09-19-04 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
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Charles S. Williams, filed a timely appeal from an unemployment insurance decision dated October 4, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on November 4, 2004 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Beverly Lawrence, human resources representative, participated in the hearing for the employer, Papetti's of Iowa. Employer's Exhibits 1 through 3 were admitted into evidence. 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 witness and having examined all of the evidence in the record, including Employer's Exhibits 1 through 3, the administrative law judge finds: The claimant was employed by the employer as a full-time CIP operator from August 27, 2003 until he was discharged on September 16, 2004. The claimant was discharged for falsifying his health history questionnaire. After the claimant was offered a job with the employer on or about August 27, 2003, he was asked to fill out a health history questionnaire to assist the employer in placing the claimant in a position for which the claimant was able to work and which would not endanger the claimant or cause the claimant harm. The claimant completed such a health history questionnaire as shown at Employer's Exhibit 1. On the first page, the claimant stated, concerning back pain, "no." On the second page at number 18, in regards to injuries including back injuries, the claimant checked the box "none of the above." Finally, on the second page at letter D and letter E, the claimant put an "x" in the "no" box for questions whether surgery had been recommended or performed and whether the claimant was taking medicines now. The claimant then went to work for the employer. On September 16, 2004, the claimant was injured and while visiting with the employer's nurse, the claimant told the nurse that he had a bad back and that he took medicines and that a specialist had wanted to perform surgery on him. The nurse's statement is shown at Employer's Exhibit 2. The employer has a policy in its rules of conduct as shown at Employer's Exhibit 3 that prohibits at number 4, falsification or misrepresentation of any company records or information. If the claimant had answered truthfully to the questions, the employer would have sent the claimant to a doctor of his choice and asked the doctor to examine the claimant and release the claimant to work at the anticipated job for the claimant or place the claimant in a job that would meet the doctor's requirements. The employer had no opportunity to do so because the claimant had marked his questionnaire incorrectly. The employer risks an injury to its employees and its coworkers and undergoes significant risk of legal liability and places the employer in jeopardy when an employee falsifies this health history questionnaire.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able, available, and earnestly and actively seeking work. He is.

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, (6) provide:

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).

(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 employer's witness, Beverly Lawrence, human resources representative, credibly testified, and the administrative law judge concludes, that the claimant was discharged on September 16, 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. Ms. Lawrence credibly testified that the claimant falsely completed various entries on his health history questionnaire as shown at Employer's Exhibit 1. Ms. Lawrence further credibly testified that after working for some time, the claimant was injured and informed the employer's nurse of previous medical conditions and history in conflict with his response to the appropriate questions on the health history questionnaire. Falsification of a company record or information is prohibited as shown at Employer's Exhibit 3. In the absence of any evidence to the contrary, the administrative law judge must conclude that the claimant's false statements were willful and deliberate. The claimant must have known of his prior medical conditions because he informed the nurse of those when asked on September 16, 2004. These kinds of conditions would not be something that the claimant would be likely to forget when filling out a health history questionnaire. Further, the administrative law judge concludes that such willful and deliberate falsification does or could endanger the health of not only the claimant but also coworkers because the employer used this health history

questionnaire to place the claimant in a position that would not endanger himself or others. The false statements also expose the employer to legal liabilities or penalties. Finally, the administrative law judge concludes that those false statements were material. Ms. Lawrence credibly testified that had the claimant answered truthfully, the employer would have dramatically changed its process in regard to the claimant and sent him to a physician, of the claimant's choice, for an examination and release of the claimant to work at the job anticipated by the employer and the claimant or to recommend a position that would meet the claimant's requirements and would not endanger the claimant. Even though the claimant had been offered employment at the time he was asked to fill out the health history questionnaire, the administrative law judge concludes that the health history questionnaire was in the nature of an application for work form and, even if not, it was an employer record or information. Accordingly, the administrative law judge concludes that the claimant willfully and deliberately entered false statements on the health history questionnaire which was an application of work form and a company record or information and the false statements endangered the safety of the claimant and others and exposed the employer to legal liabilities and the false statements were 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.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden to prove that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he is and was, at relevant times, able, available, and earnestly and actively seeking work. The claimant did not participate in the hearing and provide evidence that he is and was, at relevant times, able, available, and earnestly and actively seeking work. The employer's witness, Beverly Lawrence, human resources representative, had no knowledge about these matters. Accordingly, the administrative law judge concludes that the claimant is not able, available, and earnestly and actively seeking work and, as a consequence, he is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits and demonstrates that he is able, available, and earnestly and actively seeking work and is otherwise eligible to receive such benefits.

DECISION:

The representative's decision of October 4, 2004, reference 01, is affirmed. The claimant, Charles S. Williams, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits and further demonstrates that he is able, available, and earnestly and actively seeking work and that he is otherwise eligible for such benefits, because the claimant was discharged for disqualifying misconduct and is not able, available, and earnestly and actively seeking work.

tjc/kjf