

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

DAVID R GUTHART
366 JEFFERSON ST
THOMPSON IA 50478

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 05A-UI-01930-CT
OC: 01/23/05 R: 02
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:

David Guthart filed an appeal from a representative's decision dated February 17, 2005, reference 01, which denied benefits based on his separation from Winnebago Industries. After due notice was issued, a hearing was held by telephone on March 10, 2005. Mr. Guthart participated personally. The employer participated by Gary McCarthy, Personnel Supervisor, and David Thompson, Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Guthart was employed by Winnebago Industries from April 6, 1998 until January 25, 2005. He was last employed full time as an advanced assembler and fabricator. On July 19, 2004, Mr. Guthart received a final warning notice. The warning cited his extensive disciplinary record over the preceding five years. He had received three corrective actions notices and 19 warning forms. The warnings dealt primarily with his attendance but also addressed his use of abusive language and conduct not in the best interest of the employer. The final warning advised Mr. Guthart that any further acts of misconduct would result in disciplinary action up to and including termination.

On January 25, 2005, Dave Thompson met with Mr. Guthart to conduct a performance review. The review indicated that his attendance over the past six months had been unsatisfactory. He had missed eight hours of work and had been late on one occasion during the six months. The review also indicated that Mr. Guthart's attitude was unsatisfactory as evidenced by his extensive disciplinary history. Because of the above factors and the fact that he was not going to receive a raise, Mr. Guthart objected to the review and refused to sign it. He left Mr. Thompson's office and returned to work. Mr. Thompson approached him at his work station and again requested that he sign the review. He was told that a refusal to sign the review would constitute insubordination. When Mr. Guthart again refused to sign, he was taken to the personnel office.

Gary McCarthy, Personnel Supervisor, spoke to Mr. Guthart concerning his refusal to sign the review. He reviewed with Mr. Guthart the July 19, 2004 final warning in which he was advised that any further acts of misconduct could result in his discharge. Mr. Guthart again refused to sign. Mr. McCarthy then read the provisions of the work rules which state that refusal to sign a company document would be considered insubordination. The provisions allow for an employee to give a written rebuttal to be attached to the document being signed. The provisions also state that signing a document does not indicate agreement with it, only that it has been discussed. When Mr. Guthart continued to refuse to sign the review, he was discharged. He could have utilized the chain of command to dispute his review.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Guthart was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The discharge in this case was prompted by Mr. Guthart's refusal to sign his review to acknowledge that it had been discussed with him. He knew from the July 19 final notice that any act of misconduct could result in his discharge. The notice does not limit the future misconduct to attendance issues. Given the July 19 warning, Mr. Guthart knew or should have known that his insubordination of January 25 could result in the loss of his employment.

The employer's policy provides that the refusal to sign a company document will be considered insubordination and will result in a one-day suspension. Because of his disagreement with the review, Mr. Guthart was willing to accept a one-day suspension. However, the one-day suspension would represent disciplinary action for misconduct and would be a violation of the terms of the July 19 notice. The refusal to acknowledge receipt of a written warning by signing

it constitutes misconduct. See Green v. Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980). The administrative law judge considers the same rationale appropriate where an individual refuses to acknowledge receipt of a performance review by signing it.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Mr. Guthart's refusal to sign his review constituted a substantial disregard of the standards he knew the employer expected of him. He could have signed the review and still pursued his dispute of the review. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated February 17, 2005, reference 01, is hereby affirmed. Mr. Guthart was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf