

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

BRIAN E ROBBINS
209 – 6TH AV S
CLEAR LAKE IA 50428

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 04A-UI-04569-DWT
OC 03/28/04 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 are 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

STATEMENT OF THE CASE:

Brian E. Robbins (claimant) appealed a representative's April 12, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Winnebago Industries (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 13, 2004. The claimant participated in the hearing. Gary McCarthy and Kevin Bunger appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 24, 1992. He worked full time as a senior fabricator.

During the last month of his employment, the claimant and a co-worker decided to put red tape over the emblem of two or three of the employer's motor homes. With a black marker they then wrote the name of the competitor on the red tape. The claimant and his co-worker used red tape so it would be readily noticed. The claimant thought that since plastic was wrapped around the front of the motor home when it was sent to a dealer, the dealer would easily see the red tape on the emblem and remove it.

The employer discovered one of the motor homes with the red tape on it the week of March 25. When the employer investigated, the claimant admitted he and another employee had done this to two or three motor homes. The employer found two motor homes with the red tape over an emblem in the employer's lot. No dealer or anyone else reported finding a motor home with red tape over the emblem with a competitor's name written on the red tape.

Although the claimant's job was not in jeopardy prior to March 25, the employer discharged him on March 29, 2004, for this act.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes the claimant intentionally covered the employer's emblem with red tape and then wrote a competitor's name on the red tape. Even though the claimant considered this a prank, the claimant intentionally and substantially disregarded the employer's interests when he did this. The claimant's actions constitute work-connected misconduct. As of March 28, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 12, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 28, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf