

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

ALBERT E BITZ
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BOONE IA 50036

ACADEMY ROOFING & SHEET METAL CO
6361 NE 14TH ST
DES MOINES IA 50313-1212

Appeal Number: 05A-UI-00893-SWT
OC: 01/25/04 R: 02
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 19, 2005, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 10, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness Eric Bitz. Dave Berns participated in the hearing on behalf of the employer with Diane Parker.

FINDINGS OF FACT:

The claimant worked full time for the employer as a repair foreman from February 18, 1997 to December 28, 2004. The claimant had been warned for reporting late for work on August 21, 2003 and July 30, 2004. He was again late for work on December 2, 6, 8, and 15, 2004.

On December 27, 2004, the claimant was working on a project at the Southdale shopping center. After he arrived at the job site, he and his coworker, Eric Bitz, discovered that their hats

and gloves had been stolen from the company vehicle. After setting up the ladder and carrying the materials to the roof, they left the job site for a short period of time and walked to a nearby store to purchase hats and gloves. While they were gone, their supervisor, Dave Berns, came to the job site to check on them. When he arrived, the claimant and Bitz were not back from the store yet. When they returned, they explained to Berns where they had gone. Berns, however, was convinced that they were loafing around. He instructed them to go back to the shop and stated they were done for the day.

The claimant and Bitz went back to the shop and left work for the day. They reported to work as scheduled on December 28, 2004. Bern discharged the claimant for leaving the job site without permission and leaving the shop without permission on December 27, 2004, and based on his past work history.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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, (8) 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).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant left the job site for a short time on December 27, 2004 to get a hat and gloves at a nearby store, after discovering his hat and gloves were stolen for the company truck. He acted reasonably to obtain clothing suitable for working outside. When he left the shop on December 27, he believed that he had been sent home by his supervisor.

DECISION:

The unemployment insurance decision dated January 19, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc