

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

TODD M RUCKOLDT  
1935 WILKES  
DAVENPORT IA 52804

GABRILSON HEATING AND AIR  
CONDITIONING COMPANY  
5442 CAREY AVE  
DAVENPORT IA 52807

Appeal Number: 04A-UI-10497-A  
OC: 08-29-04 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Todd M. Ruckoldt filed a timely appeal from an unemployment insurance decision dated September 17, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a hearing was held in Davenport, Iowa, on October 21, 2004 with Vice President Greg Gabrilson participating for the employer, Gabrilson Heating and Air Conditioning Company. Mr. Ruckoldt did not respond when paged at the time of the hearing and again prior to the end of the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Todd M. Ruckoldt was employed as a pre-apprentice mechanic by Gabrilson Heating and Air Conditioning Company from November 4, 2003 until he was discharged on August 31, 2004. On or about August 31, 2004, Mr. Ruckoldt operated a motorcycle at a work site at a high rate of speed and noisily. He made so much noise that a female member of the management group of the work site cautioned him. His response was, "Come on, baby, let's go for a ride." This was the crowning event leading to his discharge. Earlier Mr. Ruckoldt had been observed smoking pot on the work site. Although a drug test was negative, the sample had been diluted. Mr. Ruckoldt had also been absent or tardy on numerous occasions.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Ruckoldt was discharged for misconduct in connection with his work. It does.

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).

The evidence establishes that Mr. Ruckoldt was operating a personal vehicle in an unsafe manner at a work site and responded rudely and inappropriately when confronted. This behavior in itself is sufficient to establish misconduct. The administrative law judge also notes that prior misconduct is also established in Mr. Ruckoldt's pattern of tardiness and absence and smoking pot at the site. Benefits are withheld.

DECISION:

The unemployment insurance decision dated September 17, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tjc/tjc