

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

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Appeal Number: 04A-UI-01041-SWT
OC 12/28/03 R 03
Claimant: Respondent (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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 21, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 19, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Nick Statler participated in the hearing on behalf of the employer. Exhibits One through Ten were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from July 1, 1996 to December 24, 2003. The claimant was also a union steward. The claimant was informed and understood that under the employer's work rules, interfering with production was grounds for discipline.

The claimant and other workers had been informed that they were to come in early at 2:00 p.m. on Christmas Eve day and would be done working at approximately 7:30 p.m. In the past the plant had been closed on Christmas Eve day. During the work shift, the claimant and others workers became concerned the line was moving slower than usual and they would not be finished with production by 7:30 p.m. Employees were urging the claimant to do something about it. The claimant had decided that he was going to leave work at 7:30 p.m. whether production was finished or not with the understanding that he would be assessed an attendance point. He talked to his supervisor and told him what he planned to do.

During a break, the claimant was again being urged by co-workers to do something. The claimant became upset and began yelling and using profanity in the cafeteria about the fact that the supervisors were slowing down the line and he had children that he wanted to spend time with on Christmas Eve. He told the employees that he was only one person but they were the union and everyone should do something to speed the line up. He then yelled that they could do what they wanted but he was going to leave and take a point. He told the employees that it was only one point. During the break, the employees became agitated and many of them were yelling, pounding on the table, and refusing to go back to work.

When management learned what had happened, the claimant was taken to the supervisor's office. He was suspended and then discharged for interfering with production based on his conduct on December 24, 2003. Production was stopped for 15 minutes, as a manager had to meet with employees and convince them to go back to work.

The claimant filed for and received a total of \$2,576.00 in unemployment insurance benefits for the weeks between December 28, 2003, and February 14, 2004.

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 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 claimant's conduct violated a known work rule and was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Even based on the claimant's own testimony, in the context of what was happening and how it was said, his announcement that he did not know what they were going to do but he was going to leave and take a point because it was only one point was incitement to his co-workers to follow his lead. There were ways to calmly resolve the problem, but the claimant chose to take an extreme approach. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits, the claimant was overpaid \$2,576.00 in unemployment insurance benefits for the weeks between December 28, 2003, and February 14, 2004.

DECISION:

The unemployment insurance decision dated January 21, 2004, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$2,576.00 in unemployment insurance benefits, which must be repaid.

saw/b