

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 J PEASE  
1821 – 6<sup>TH</sup> AVE SE  
CEDAR RAPIDS IA 52403

CQS CONSTRUCTION  
2541 TECHNOLOGY DT #404  
ELGIN IL 60123

Appeal Number: 04A-UI-07673-CT  
OC: 10/05/03 R: 12  
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:

David Pease filed an appeal from a representative's decision dated July 12, 2004, reference 03, which denied benefits based on his separation from CQS Construction. After due notice was issued, a hearing was held by telephone on August 9, 2004. Mr. Pease participated personally. The employer participated by Kory Lindquist, Vice President.

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. Pease was employed by CQS Construction from March 25 until April 23, 2004 as a full-time painter. He and his son were working in a home on

April 23 and were throwing drywall mud at each other. As a result of this incident, Mr. Pease was discharged and his son suspended. The son was only suspended because he had been with the company for a longer period of time.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Pease 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Pease was discharged for throwing drywall mud at the job site. He knew or should have known that this type of horseplay was inappropriate in a customer's home. It was not the type of conduct the employer should have had to warn him against. Under the circumstances, the administrative law judge concludes that the conduct was a substantial disregard of the standards the employer had the right to expect. Accordingly, benefits are denied.

Mr. Pease testified that only his son threw the drywall mud and that the son did so on only one occasion. The administrative law judge did not find Mr. Pease's testimony credible as he was somewhat evasive as to the circumstances of his separation.

DECISION:

The representative's decision dated July 12, 2004, reference 03, is hereby affirmed. Mr. Pease 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/b