

**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**

**SHELLE BROOKS  
100 LAKE AVE #1  
PO BOX 704  
LAKE PARK IA 51347**

**NORTHERN IOWA DIE CASTING INC  
702 E RAILROAD  
LAKE PARK IA 51347**

**Appeal Number: 06A-UI-01003-ET  
OC: 07-10-06 R: 01  
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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 25, 2006, reference 06, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 13, 2006. The claimant participated in the hearing. Joanne Stockdale, President; Owen Stockdale Vice-President; and Loretta Sweitzer, Human Resources Generalist, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Northern Iowa Die Casting from July 28, 2005 to January 10, 2006. She was rehired after agreeing to attendance conditions

that would remain in effect for the first 90 days of her reemployment. Under those conditions the claimant was not allowed to miss more than one day or have more than one tardy within a 30-day period excluding absences due to illness with a doctor's excuse, major life events or pre-approved time off. On August 22 and 23, 2005, the claimant did not report for work because she was arrested for burglary. She told the employer it was a misunderstanding and said she could bring in documentation to that effect within a week. The employer decided to give her the benefit of the doubt and wait for the promised documentation. The claimant was tardy September 12 and October 3, 2005; received written warnings for not following rules October 12, 2005 and October 14, 2005; left early due to illness without a doctor's excuse October 14, 2005; was absent without a doctor's excuse October 24, 2005; received a written warning November 3, 2005, for "erratic temperament; failure to follow instructions; failure to follow plant rules; attendance; and failure to provide promised court documentation" and was tardy December 7 and 15, 2005. At the beginning of January 2006 the claimant showed the employer court documents indicting she pled guilty to a misdemeanor and the employer terminated her employment for her absence due to being in jail as well as continued attendance problems.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant led the employer to believe her arrest was a misunderstanding and therefore the charges would be dropped, and that the misunderstanding, rather than a criminal act, resulted in her two days in jail. While at first glance this may not appear to be a current act, the claimant promised paperwork within one week and had notice that her employment would be terminated if she did not provide evidence to that effect. When she failed to deliver the paperwork within one week the employer decided to let the court decide whether the situation was a misunderstanding or a criminal act and when she brought her court papers in at the beginning of January the employer discharged her. Under these circumstances the employer should not be penalized for failing to terminate the claimant's employment in August when the situation occurred because it was trying to be fair. The claimant's attendance problem was not an isolated incident and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The January 25, 2006, reference 06, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/s