

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**RAYMOND N FIDLER**  
Claimant

**APPEAL NO. 06A-UI-09412-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENSEN BUILDERS LTD**  
Employer

**OC: 08/27/06 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jensen Builders, Ltd. (employer) appealed a representative's September 19, 2006 decision (reference 01) that concluded Raymond N. Fidler (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2006. The claimant did not participate in the hearing, as the hearing notice sent to his last-known address of record was returned to the Appeals Section as undeliverable and his last-known telephone number of record was disconnected. Brian Harryman appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 23, 2005. He worked full time as laborer at the employer's commercial construction business. His last day of work was August 23, 2006. The employer discharged him on August 24, 2006. The stated reason for the discharge was walking off the job without notice or permission.

On August 23 the claimant was to work on a job site at Camp Dodge in Johnston, Iowa. He reported for work at about 6:00 a.m. as scheduled, but initially went to the wrong Camp Dodge job site; he was redirected the proper Camp Dodge job site and arrived there at approximately 6:30 a.m. He left the job site at approximately 9:30 a.m. He did not ask or inform his foreman about leaving. When the foreman discovered he was gone, he initially thought the claimant had just gone for a break, but when the claimant did not return for over an hour, the foreman contacted Mr. Harryman, the job superintendent.

Mr. Harryman attempted several times to reach the claimant both on his cell phone and at home. He ultimately learned that two other employees who had not reported for work that day

had called the claimant and invited the claimant to join them at a bar in Ankeny where they were drinking. The claimant left work and joined those employees in the bar, drinking for the day. As a result, when the claimant sought to return to work on August 24 he was discharged.

The claimant established a claim for unemployment insurance benefits effective August 27, 2006. The claimant has received no unemployment insurance benefits since the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

The claimant's leaving work without permission or notice to go drinking in a bar shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's September 19, 2006 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 24, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw