

**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**

**REFIK SAKANOVIC
1003 DENVER ST
WATERLOO IA 50702-3622**

**OMEGA CABINETS LTD
1205 PETERS DR
WATERLOO IA 50703**

**Appeal Number: 06A-UI-05241-CT
OC: 04/23/06 R: 03
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, 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 for Misconduct

STATEMENT OF THE CASE:

Refik Sakanovic filed an appeal from a representative's decision dated May 12, 2006, reference 01, which denied benefits based on his separation from Omega Cabinets, Ltd. After due notice was issued, a hearing was held by telephone on June 8, 2006. Mr. Sakanovic participated personally. The employer participated by Amy Victor, Human Resources Representative. Zijo Suceska participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sakanovic was employed by Omega Cabinets,

Ltd. from February 13, 2003 until April 23, 2006 as a full-time process technician. Prior to the week of April 23, 2006, the employer noted that materials were missing from stock. The surveillance camera did not cover the area from which the materials were missing and, therefore, the employer could not determine where the items had gone. Because of concerns of theft, the camera was set to watch the area.

On April 23, Mr. Sakanovic was scheduled to report to work at 9:45 p.m. He reported to the workplace between 4:30 and 5:00 p.m. He had previously been allowed to report to work one or two hours ahead of his scheduled time in order to make preparations for work. On April 23, he and two others were observed removing base and crown molding from the production area. The wood, valued at approximately \$5,000.00, was placed in the trunk of Mr. Sakanovic's vehicle. The police were called and he was arrested on the premises. He was charged with third degree burglary. The criminal charges had not been resolved as of the date of the hearing.

Employees are allowed to purchase items from the company and Mr. Sakanovic had done so in the past. There is a specific location where employees are to go to make such purchases and a specific procedure to be followed. Mr. Sakanovic did not have a receipt for the wood he was intending to remove on April 23. As a result of the above incident, he was discharged from the employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sakanovic 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Sakanovic was discharged for theft of property belonging to the employer. He testified that his lead person led him to believe that he was making a legitimate purchase. The administrative law judge did not find this contention credible. Mr. Sakanovic knew the procedure for making purchases from the company as he had utilized that procedure in the past. Based on this history, the administrative law judge concludes that there was no language barrier that prevented Mr. Sakanovic from understanding the employer's procedure regarding the removal of materials. He was not following that procedure on April 23. The fact that he came to the workplace to get the materials four hours before the start of his shift is suspicious. If he was making a legitimate purchase, it seems he would have been able to do so during his work shift. He placed the material in the trunk of his vehicle. It was not as if the wood would have been in an open pick-up truck and exposed to theft by others if he had made the purchase during his shift. Given all of the circumstances, the administrative law judge is satisfied that Mr. Sakanovic knew he was removing property he had no right to remove.

Theft of property belonging to one's employer is clearly contrary to the type of behavior an employer has the right to expect. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 12, 2006, reference 01, is hereby affirmed. Mr. Sakanovic 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/pjs