

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

GEORGE A GUTMANN  
1259 SHERMAN RIDGE  
WAUKON IA 52172

GOOD SAMARITAN SOCIETY INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03938-S2T  
OC: 02/29/04 R: 04  
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Good Samaritan Society (employer) appealed a representative's March 24, 2004 decision (reference 01) that concluded George Gutmann (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2004. The claimant participated personally. The employer participated by David Hjortland, Administrator; and Jason White, Maintenance Supervisor.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 19, 2003, as a part-time maintenance assistant. The claimant received a copy of the employer's handbook and signed for its receipt on January 20, 2004.

Sometime before December 2003, the claimant and his supervisor discussed some used vinyl windows, which were being stored at the employer's facility. The supervisor expressed discontent that he had to store the windows. The claimant indicated that he could use the windows on his property. The claimant understood the supervisor to say that the claimant could have a couple windows. The claimant saw an electrical cord in the garbage and took it home to use.

On or about December 5, 2003, the supervisor loaded used wooden windows from the facility and transported them to the claimant's property. The claimant gave the supervisor a tour of his farm and the vinyl windows were in plain view.

On or about February 19, 2004, the employer noticed the vinyl windows were missing. The claimant admitted taking the windows with his supervisor's permission. He also admitted taking the electrical cord. The claimant accidentally left a screwdriver in his pocket and took it home with him. The claimant returned the electrical cord and the screwdriver. The employer told the claimant the supervisor had no permission to allow the claimant to take property from the facility and give it to the claimant. Therefore, the claimant took the vinyl windows without permission. The employer terminated the claimant on February 24, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was not.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Employee dishonesty is contrary to the standard of behavior the employer would have a right to expect. The employer has not established that the claimant took the windows with the intent to steal. The claimant took the windows with the understanding that his supervisor had the right to give them away. The employer confirmed that the supervisor had the right to give items away when the supervisor gave away the wooden windows without authorization. The employer agreed to the supervisor's gift after the fact in that instance. The employer has failed to establish that the claimant was discharged for misconduct. Benefits are allowed.

#### DECISION:

The representative's March 24, 2004 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/kjf