

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON S JANS**  
Claimant

**APPEAL NO. 07A-UI-00856-L**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EVERLY ELECTRIC INC**  
Employer

**OC: 12-10-06 R: 02  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the January 17, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 27, 2007 in Des Moines, Iowa. Claimant participated. Employer participated through Jeannie Everly and Dennis Fee.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time electrician's helper through December 15, 2006, when he was discharged. On December 11, employer received a phone call from a motel in Wisconsin where employer provided rooms to employees while working on a project in the area. Motel personnel reported one of employees defecated in the sink of a pool area restroom at the motel and employer would be evicted if something else like that happened. When contacted on December 12 and 13, employees Kade Chambers and Evan advised employer that claimant had bragged to them about being upset the motel pool closed at 9:00 p.m. so he set the door so it would not lock and then defecated in the pool area bathroom sink.

On August 18, 2006, claimant was arrested for OWI and Everly told him his job was on thin ice as a driver's license is required for the job. Employer conducts an initial background check at hire and its insurance carrier verifies license status every quarter thereafter. In August, employer also discovered claimant had been without a license for up to three months prior to that for failure to pay fines. Employer kept him on as long as possible without a license. Claimant's license is suspended for a year from the date of the OWI.

While in Wisconsin in December and in also in the spring of 2006, Fee, a retired independent project manager who works as needed, also observed claimant consuming excessive alcohol (six pack and pint of bourbon) in one night about the time this happened and noted related work performance problems in the morning when normally he was a good bobcat operator. Fee also

verbally warned claimant for verbally abusing the motel manager in Wisconsin because of a cold whirlpool even though he did not use it.

During the spring of 2006 while working in Iowa, Kade and Jason (the motel roommate) reported to Fee that claimant put an object with metal in the microwave causing it to spark so Fee warned claimant verbally this was his last chance warning to preserve his employment.

### **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 § 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).

Claimant's testimony is less than credible given his history with employer about multiple issues. His crude behavior in reaction to anger reflected adversely on employer's business activities and his repeated bad behavior after having been warned is evidence of intentional misconduct. Benefits are denied.

**DECISION:**

The January 17, 2007, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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