

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

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LIFE-TIME FENCE COMPANY INC
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CEDAR RAPIDS IA 52408-8144

Appeal Number: 04A-UI-09478-ET
OC: 07-25-04 R: 03
Claimant: Appellant (1R)

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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 25, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 27, 2004. The claimant participated in the hearing. Kate Ries, Owner, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 foreman of a fencing crew for Life-Time Fence Company from October 14, 2003 to July 28, 2004. The employer was experiencing tool and equipment thefts and while investigating the situation it discovered several calls from the claimant's

employer-provided cell phone to a local pawnshop. On July 27, 2004, a manager went to the pawnshop, accompanied by officers from the Cedar Rapids Police Department, and found several of the missing items. The pawnshop could not find any paperwork associated with its acquisition of the tools and equipment. The claimant was arrested and charged with theft and the employer terminated his employment July 28, 2004. The employer determined the value of the stolen items to be \$4,050.00. (Employer's Exhibit One) The claimant pled guilty to second-degree theft on August 19, 2004. (Employer's Exhibit Two) The claimant denies responsibility for the theft and testified he pled guilty to the theft charge in exchange for the State dropping a drug charge against him; but the plea agreement entered states that in addition to pleading guilty to the theft charge he also pled guilty to a drug charge of "Pseudoephedrine – Used as a Precursor," which was a lesser included offense in a separate drug charge. (Employer's Exhibit Two) He further testified that he did use the employer's cell phone to contact the pawnshop but he was calling to buy drugs rather than discuss pawning the tools.

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). While the claimant denies stealing the employer's tools and pawning them, he pled guilty to the charge of second-degree theft and his contention that he did so in consideration of the State dropping drug charges against him is disproved by the plea agreement, which clearly shows guilty pleas to the theft as well as a separate drug charge. Additionally, the claimant admitted using the employer's cell phone to contact his drug dealer at the pawnshop, an act that constitutes disqualifying job misconduct in and of itself. The claimant's testimony was not persuasive or credible and his actions demonstrate a willful and wanton disregard of the employer's interest as is found in deliberate violation or 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 as well as criminal law. 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 August 25, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are denied. The issue of whether the claimant's actions constitute gross misconduct as defined by Iowa Code section 96.5-2-c is remanded to the unemployment insurance Services Division for a determination of whether it is appropriate to cancel the claimant's wage credits pursuant to Iowa Code section 96.5-2-b.

je/b