

**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**

**ROBERT L BINNS  
PO BOX 244  
OSKALOOSA IA 52577**

**DOOLEYS INCORPORATED  
PO BOX 32  
OSKALOOSA IA 52577-0030**

**Appeal Number: 05A-UI-06053-JTT  
OC: 05/08/05 R: 03  
Claimant: Appellant (2)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Robert Binns filed a timely appeal from the May 31, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 1, 2005. Mr. Binns participated. Shane Dooley, owner, represented the employer and presented additional testimony through employee Rosemary Giesel.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Binns was employed by Dooley's Incorporated as a full-time factory worker from February 17, 1983, until May 11, 2005, when Shane Dooley discharged him for misconduct.

The final incident that prompted Mr. Dooley to discharge Mr. Binns came to the attention of the employer on or about May 9, 2005. On that date, a customer to whom a furniture item had been shipped called to complain that the item was damaged upon arrival. The customer had ordered a deacon's bench. Upon receiving the order, the customer observed that one leg was damaged and the seat fabric was torn. The box in which the item arrived showed no sign of damage. The customer advised Dooley's employee Rosemary Giesel that the item should never have been shipped, cancelled the order, and returned the item at Dooley's expense. Dooley's continued business relationship with this customer may have been damaged by the incident.

After Ms. Giesel received the customer complaint, she apprised Mr. Dooley of the situation. Mr. Dooley in turn contacted Mr. Binns. Mr. Binns advised that the customer was "crazy" and that the item had been shipped without damage. Mr. Dooley indicated that, for Mr. Binns' sake, he hoped that turned out to be the case.

The deacon's bench was not manufactured by Dooley's, but had been ordered from another business. On May 5, Mr. Binns packed the item for shipment to Dooley's customer. Both Ms. Giesel and Mr. Dooley instructed Mr. Binns to take additional care in packing the item, as the customer placing the order was an important customer and especially particular. Mr. Binns inspected the item before he packed it and observed no damage. Mr. Binns placed extra boxes in the package to shield the item from harm.

On May 11, 2005, Dooley's received the returned deacon's bench. The item had the damage the customer had described. The box in which the item was packed indicated no damage. Mr. Dooley concluded that Mr. Binns had carelessly or negligently shipped a damaged item, despite the instruction to use special care with the order. Mr. Binns was home ill that day. Mr. Dooley telephoned Mr. Binns and advised him that he was being discharged for shipping the damaged product.

The employer does not assert that Mr. Dooley intentionally shipped a damaged item to a customer, and the evidence in the record does not support such a conclusion. Mr. Binns had been a long-time valued employee. Mr. Binns had not previously been reprimanded or counseled for carelessness or negligence in the performance of his duties. Mr. Binns had received two prior reprimands for attendance issues. The most recent reprimand for attendance had been issued at the beginning of 2005. The employer has a policy of discharging employees upon issuance of a third written reprimand.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Binns was discharged for misconduct in connection with his employment. It does 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Based on the evidence in the record, the administrative law judge is unable to conclude that Mr. Binns shipped a damaged product to the customer. Though the box in which the item was shipped showed no damage, the box had been opened at least once after Mr. Binns packed it. Based on the evidence in the record, there is more reason to believe the damage occurred after Mr. Binns packed the item for shipping. In short, the evidence in the record does not sufficiently corroborate the allegation of misconduct. See 871 IAC 24.32(4).

Even if the evidence in the record had established that Mr. Binns had been careless or negligent in packing the deacon's bench, the evidence indicates that Mr. Binns had not been previously reprimanded or counseled for negligence and/or carelessness in the performance of his duties. Negligence and/or carelessness must be so recurrent as to indicate a willful or wanton disregard of the employer's interest before it may be deemed misconduct for

unemployment insurance purposes. See 871 IAC 24.32(1)(a). Under the rule, one act of negligence or careless is simply insufficient to establish misconduct.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Mr. Binns was discharged for no disqualifying reason. Accordingly, Mr. Binns is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's decision dated May 31, 2005, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjw