

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

DAVID N SLACK  
820 AVE D  
FORT MADISON IA 52627

WOLF PACKAGING INC  
2068 – 303<sup>RD</sup> AVE  
FORT MADISON IA 52627 9751

Appeal Number: 05A-UI-02908-DWT  
OC: 02/20/05 R: 04  
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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

David N. Slack (claimant) appealed a representative's March 17, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Wolf Packaging, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2005. The claimant participated in the hearing. Joyce Simpson, the human resource/ safety manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 8, 2000. He worked as a full-time press operator on second shift. The claimant's supervisor for the last three months of his employment was Paul Hellman.

On February 14, another employee dumped waste paper on the floor by the claimant's work area. The claimant did not appreciate this and went to talk to this co-worker. Although Hellman told the claimant he would talk to the other employee, the claimant did not hear Hellman say anything. When Hellman talked to the claimant, he was at the claimant's machine and behind the claimant, the claimant had his earplugs in and it was noisy in that area because machines were running. After the claimant asked the other employee why he dumped the waste paper by the claimant's work area, the two started yelling at one another. The claimant became agitated when he tried to talk to this co-worker. The two men engaged in a verbal confrontation for a short time. Finally, the claimant walked back to his work area. The claimant never heard Hellman telling him to go back to his work area. As the claimant walked back to his work area, Hellman started walking toward him and heard the claimant make a comment under his breath. The claimant made a comment to himself that the other co-worker needed to kill his noise. The claimant meant that the other worker needed to keep his mouth shut.

Hellman understood the claimant to say he was going to kill the co-worker. Hellman contacted Simpson for guidance because he concluded the two men were going to cause trouble. The other employee was sent home and about 30 to 45 minutes later, the employer asked the claimant to leave work early. By the time the other employee had been sent home, the claimant was talking to him and the two had resolved their differences. On February 15, the employer discharged the claimant for threatening another employee at work the day before.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency,

unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on Hellman's report of the February 14 incident, the employer established business reasons for discharging the claimant. Since the employer relied on hearsay information from a witness who did participate in the hearing, the claimant's testimony must be given more weight. This means the claimant's testimony as to what occurred on February 14 is reflected in the findings of fact. A preponderance of the credible evidence does not establish that claimant failed to follow his supervisor's direction. Instead, he never heard his supervisor tell him anything. While the claimant's comment to himself as he walked back to his machine may have been inappropriate, the facts do not establish that the claimant threatened a co-worker on February 14, 2004. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of February 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's March 17, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 20, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc