

**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**

**KEITH H ELDER  
616 – 3<sup>RD</sup> ST SW  
ORANGE CITY IA 51041**

**ADVANCED BRANDS LLC  
101 – 14<sup>TH</sup> ST SE WAY  
ORANGE CITY IA 51041**

**Appeal Number: 04A-UI-08620-A  
OC: 07-11-04 R: 01  
Claimant: Appellant (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Keith H. Elder filed a timely appeal from an unemployment insurance decision dated August 5, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a hearing was held in Sioux City, Iowa, on September 22, 2004 with Mr. Elder participating. Human Resources Manager Jen Sandbulte participated for the employer, Advanced Brands, LLC.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Keith H. Elder was a production worker for

Advanced Brands, LLC from July 30, 2002 until he was discharged July 16, 2004. Mr. Elder had been injured on the job. He had returned to work on light duty. He was still going through physical therapy which required periodic shoulder exercises followed by icing. He had recently been released from desk work to doing light-duty work on the production line where he sorted product. His duties required that he make certain that product did not overlap because overlapping would create a contamination issue which would require that the line be closed down for several hours.

While working at a desk, the company had not required that Mr. Elder do his exercises and icing at particular times. When he returned to the line, however, the company required that he do the exercises and icing during regularly scheduled breaks. Mr. Elder refused to do so. He was given the opportunity to provide documentation to the company that he needed to be allowed to leave the line whenever he wished, but he did not secure that documentation. Nevertheless, he told Human Resources Manager Jen Sandbulte on July 16, 2004 that he intended to leave the line whenever he wished or whenever it became necessary to perform his exercises. He felt that since the injury had occurred on duty that he need not give up his break times for physical therapy.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Elder was discharged for misconduct. It does.

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).

Continued refusal to perform assigned tasks is insubordination, one form of misconduct. When determining if a particular refusal to perform a task constitutes misconduct, the administrative law judge must determine the reasonableness of the instruction as well as the reasonableness of the refusal. The employer needed Mr. Elder on the line sorting product as a quality control measure to avoid contamination through overlapping product. While his absence in itself would not have caused the line to shut down, his absence made it more likely that contamination could occur. Mr. Elder did not provide documentation stating that he should be allowed to leave the line whenever necessary. His refusal to follow instructions was based on the fact that the company had allowed him more leeway while he was working at a desk job earlier and because he felt that he should not give up his personal time on breaks because his injury had occurred on the job. The claimant's reasons are less substantial than the employer's reasons for restricting the times at which Mr. Elder could perform his physical therapy. The administrative law judge concludes that Mr. Elder was insubordinate in his refusal. Benefits are withheld.

DECISION:

The unemployment insurance decision dated August 5, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tjc/tjc