

**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**

**SHAWN W WAKEFIELD  
PO BOX 27  
GRANDVIEW IA 52752**

**CK PROCESSING CO INC  
PO BOX 1515  
MUSCATINE IA 52761**

**Appeal Number: 04A-UI-09608-A  
OC: 08-15-04 R: 04  
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)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Shawn W. Wakefield filed a timely appeal from an unemployment insurance decision dated September 2, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a hearing was held in Davenport, Iowa, on October 20, 2004 with Mr. Wakefield participating. Exhibit A was admitted into evidence on his behalf. Production Manager Chris Melson participated for the employer, CK Processing Company, Inc. Exhibits 1 through 3 were admitted into evidence for the employer.

#### 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: Shawn W. Wakefield was employed as a bagger by CK Processing Company from April 12, 2004 until he was discharged on August 13, 2004.

August 13, 2004 was a payday. The second shift employees such as Mr. Wakefield can receive their checks shortly before their shift begins so that they can cash them before going to work. Mr. Wakefield received his check but returned to Production Manager Chris Melson shortly thereafter angry at a deduction for child support insurance. Mr. Wakefield believed that the wrong amount had been deducted from his check. While Mr. Melson called Office Manager Judy Robles to get the documentation to show Mr. Wakefield the reason for the deduction, he became belligerent and profane. Mr. Melson told him several times to calm down. Mr. Wakefield did not do so and challenged Mr. Melson as to what he would do if Mr. Wakefield did not calm down. Mr. Melson responded that he would discharge Mr. Wakefield. Mr. Wakefield then challenged him to do so. Mr. Melson thereupon discharged Mr. Wakefield.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the discharge was 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).

The company may well have made an error in computing the deduction from Mr. Wakefield's check. The evidence establishes that Mr. Melson and Ms. Robles were attempting to locate the documentation to either persuade Mr. Wakefield that his concerns were groundless or to discover if they had made an error. Mr. Wakefield, it is clear, would not control his temper long enough to allow management to investigate the situation. Belligerent, profane challenges to an employer trying to resolve a dispute constitute misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated September 2, 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