

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

SHAD C SHERWOOD  
17119 EDDYVILLE RD  
OTTUMWA IA 52501

MC WANE INC  
CLOW VALVE COMPANY  
902 S 2<sup>ND</sup> ST  
OSKALOOSA IA 52577

**AMENDED**

Appeal Number: 04A-UI-06208-DWT  
OC 12/28/03 R 03  
Claimant: Respondent (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 are 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  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

McWane, Inc., doing business as Clow Valve Company (employer), appealed a representative's May 28, 2004 decision (reference 01) that concluded Shad C. Sherwood (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2004. The claimant participated in the hearing. David Cummins, Bob Kelly and Travis Brown appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two and Three were offered and admitted as evidence. 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 1999. He worked full time as an iron bench grinder. Kelly was the claimant's supervisor and Brown was a lead person.

During the claimant's employment, Kelly talked to the claimant about his attitude and the way he treated his co-workers. Within the last month of his employment, Kelly told the claimant the next time he intimidated an employee he would be discharged. When Brown gave the claimant instructions, the claimant often challenged Brown and disagreed with his directions. The claimant and Brown did not agree on many things.

On May 10, 2004, the employer noticed some employees were not putting numbers on their castings as the employer required. The employer identified three employees who were not or possibly were not putting numbers on their castings. Kelly told Brown to tell the three employees to number their casts. Brown talked to one of the three people before he talked to the claimant. When Brown approached the claimant, the claimant assumed Brown was singling out the claimant or picking on him. Brown told the claimant to make sure he numbered his casts. The claimant responded by telling Brown he had never numbered his castings before, would not start and asked when Brown started to have the authority to change rules. The claimant approached Brown and bumped Brown's chest with his and the two men's noses touched. Brown backed away and told the claimant he was out of there and Brown was going to report this incident to Kelly. Although the claimant told Brown he was not going to number his castings, ultimately he did.

When Kelly talked to the claimant, the claimant acknowledged he had been engaged in a confrontation with Brown. On May 11, 2004, the employer discharged the claimant for violating the employer's rules of conduct (Employer's Exhibit 1) on May 10. The employer concluded the claimant's conduct on May 10 amounted to insubordination and he threatened Brown.

The claimant reopened his claim for benefits during the week of May 9, 2004. He filed claims for the weeks ending May 15 through June 12, 2004. He received a total of \$1,449.00 in benefits during these weeks.

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. 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).

The claimant knew or should have known his job was in jeopardy if he failed to follow a lead person's instructions. The employer previously warned the claimant about his attitude and how he intimidated his co-workers. On May 10, 2004, Brown gave the claimant a reasonable instruction and the claimant's confrontational attitude and actions toward Brown amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct on May 10, 2004. As of May 9, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not qualified to receive unemployment insurance benefits during the weeks ending May 15 through June 12, 2004. The claimant has been overpaid a total of \$1,449.00 in benefits he received for these weeks.

DECISION:

The representative's May 28, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 9, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant is not legally entitled to receive benefits during the weeks ending May 15 through June 12, 2004. He has been overpaid a total of \$1,449.00 in benefits he received for these weeks.

dlw/kjf/b