

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

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Appeal Number: 04A-UI-03272-SWT
OC 02/08/04 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 17, 2004, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 8, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, EJ Gallagher III, and witnesses, Mike Oberhauer, Brian Kingery, and Larry Fishels. Katheryn Nuss participated in the hearing on behalf of the employer with witnesses, Ron Simon and A.J. McKinney.

FINDINGS OF FACT:

The claimant worked full time for the employer from June 2, 2003 to February 24, 2004, as a tool and die maker. The claimant had worked for the previous owner of the business, called GMT, from May 28, 1988. When the current owner took over, it was announced that GMT rules would remain in effect. GMT had a written work rule prohibiting theft or misappropriation of

company policy. GMT also had an unwritten policy that employees were required to obtain permission from a supervisor before taking scrap materials from the plant and were not allowed to sell any products taken. The claimant was informed about and understood these rules and policies.

In February 2004, Brian Kingery was given the task of inspecting and sorting some mandrels to determine what to scrap and what to keep. Kingery asked the claimant if he was interested in any of the scrap pieces. The claimant told Kingery that he might be able to use some scrap pieces on his farm. He asked Kingery to get permission from the shop supervisor or plant manager for him to take the scrap mandrels. On February 23, 2004, Kingery told the claimant that he could go ahead and take some of the scrapped items. The claimant assumed that he had gotten permission from a supervisor and took three of the mandrels to use as hinge pins for gates. The claimant openly took the mandrels and put them aside in plain view of supervisors and other employees. At the end of the workday, the claimant took the mandrels out to his car in the sight of his supervisor, A.J. McKinney. The employer discharged the claimant on February 24, 2004, for taking company property without permission from a supervisor, which the employer considered to be theft. The claimant mistakenly believed that Kingery had sought and obtained permission from a supervisor for him to take the items.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence establishes that the claimant mistakenly believed that Kingery had sought and obtained permission from a supervisor for the claimant to take the mandrels. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 17, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf