

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

KENNETH D STARK  
53 GRADE ST  
WINTERSET IA 50273

HOLT PLUMBING & HEATING INC  
304 E MADISON  
WINTERSET IA 50273

Appeal Number: 04A-UI-10000-DWT  
OC: 08/15/04 R: 03  
Claimant: Respondent (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 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

STATEMENT OF THE CASE:

Holt Plumbing & Heating, Inc. (employer) appealed a representative's September 8, 2004 decision (reference 01) that concluded Kenneth D. Stark (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 October 7, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Lynn Holt, the owner, appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in 1997. The claimant worked full time installing furnaces for the employer. The claimant worked about 50 percent of the time with another employee. The rest of the time he worked by himself, which meant driving one of the employer's vehicles to the job.

The employer requires employees to maintain a driving record that is acceptable to insurance companies so that the employee is insurable. The employer's insurance company did an audit of the claimant's driving record in July or August 2004. Based on the claimant's driving record, the employer's insurance company notified the employer that as of August 13, 2004, the employer's insurance company would no longer insure the claimant because of his driving record. (Employer 2)

During the claimant's employment he received eight driving citations. The citations started in 1999. The most recent citation occurred on May 19, 2004 when he was cited for speeding. (Employer 1)

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The only reason the employer ended the claimant's employment was because the employer's insurance company decided it would no longer insure the claimant when he drove the employer's vehicle. Part of the claimant's job required him to be able to drive one of the employer's vehicles to a job. Prior to the insurance company's denial to insure the claimant, the

claimant's job was not in jeopardy. The employer established compelling business reasons and really had no alternative but to discharge the claimant when the employer's insurance company denied the claimant continued insurance coverage. For unemployment insurance purposes, the claimant did not commit a current act of work-connected misconduct. It is not known when the employer's insurance company had previously audited the claimant's driving record, so it is not known if a June 2004 speeding violation resulted in the claimant being uninsurable or if the insurance company looked at tickets the claimant received in 2001 and 2002. The evidence does not establish that the claimant intentionally or substantially disregard the employer's interests. Therefore, as of August 15, 2004, he is qualified to receive unemployment insurance benefits.

(As of October 14, 2004, the claimant has not filed any weekly claims.)

**DECISION:**

The representative's September 8, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons. These reasons do not constitute work-connected misconduct. As of August 15, 2004, 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/b