

**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**

**CHAD W MOSS
814 W MONTGOMERY
KNOXVILLE IA 50138**

**PRIMO DEVELOPMENT LIMITED
D/B/A GODFATHER'S PIZZA
PO BOX 2800
SPIRIT LAKE IA 51360-2800**

**Appeal Number: 04A-UI-00845-R
OC: 12/14/03 R: 02
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, 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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Chad W. Moss, filed a timely appeal from an unemployment insurance decision dated January 16, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, on February 16, 2004, with the claimant participating in person. The employer, Primo Development, Inc., doing business as Godfather's Pizza, participated in the hearing by telephone. Mike Stuart, District Manager, participated for the employer. Pat Olsen, Director of Human Resources, was available to testify for the employer, but not called because his testimony would have been repetitive and unnecessary. Employer's Exhibit One and Claimant's Exhibit B were admitted into evidence. Claimant's Exhibit A was not admitted into evidence. The administrative law

judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The claimant requested the in-person hearing. The administrative law judge set the in-person hearing in Des Moines, Iowa. However, the employer's home office is in Spirit Lake, Iowa. The employer contacted the administrative law judge on February 6, 2004 and requested permission to participate by telephone because one of its witnesses would be from Spirit Lake, Iowa and it would be impossible for that witness to come down for the in-person hearing. Secondly, the other witness who would ordinarily have been from Knoxville, Iowa was at a special meeting in Spirit Lake, Iowa, on the day of the hearing and would not be able to participate in person. Because, generally, in-person hearings are set at the location most convenient to the party not requesting the in-person hearing, but because of the inconvenience in having the claimant go to Spencer, Iowa for the in-person hearing, the administrative law judge consented to take the employer's testimony of those witnesses who could not be in Des Moines, Iowa, by telephone. The administrative law judge directed the employer that any witnesses from the Knoxville area who were not in Spirit Lake, Iowa, must participate in person, but no such witnesses were used.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One and Claimant's Exhibit B, but excluding Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full time manager from December 17, 2001 until he was discharged on December 17, 2003. The claimant was discharged for falsifying papers indicating that he had conducted an employee meeting on December 14, 2003, but no such meeting had occurred. The employer requires that a manager have an employee meeting every 28 days and the last day for the appropriate period to have such a meeting was December 14, 2003. The claimant had not scheduled any such meeting and did not have a meeting. However, the claimant, in order to "make labor" prepared documents indicating that a meeting had occurred, including clocking in 15 people which were employees, for ten minutes to indicate that those employees had participated in a meeting when in fact, they had not. The employer learned of this in visiting with other employees and performed an investigation and learned that no meeting had taken place although paperwork had been prepared by the claimant indicating such a meeting. The claimant conceded as much to the employer when confronted. Just one month earlier, on or about November 16, 2003, the claimant was also supposed to have had an employee meeting but did not, but again prepared documents indicating that such a meeting had occurred. The employer had suspicions about this meeting and gave the claimant an oral warning about a failure to have such meetings. The employer has rules in its handbook, a copy of which the claimant received and for which he signed an acknowledgement and of which he was aware, prohibiting falsifying records or reports. Willfully falsifying a time record, and intentional or negligent violation of cash control policies and procedures. The claimant testified that he was warned many times that he was not "making labor," which means making more money than paying out in labor. By holding a meeting, he would get certain credit for having the meeting for the two time periods in question and allow the claimant to "make labor." Accordingly, although the claimant had not scheduled meetings, he indicated that such meetings had occurred when in fact, they had not.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Mike Stuart, District Manager, credibly testified that the claimant was discharged for falsifying records indicating that he had had a required meeting of employees on December 14, 2003, when in fact, no such meeting had been held. The employer requires that a manager have an employee meeting every 28 days and the last day of that period was on December 14, 2003. The claimant had not scheduled a meeting and none was held, but nevertheless falsified documents including employee pay documents indicating that a meeting had been held. The claimant concedes all of this. Just one month previously, the claimant had

done the same thing and received an oral warning from the employer when the employer was suspicious about whether the claimant had had a meeting. The claimant testified that he did so because he was not, "making labor," which means that he was not making more money than paying out in labor. Because hosting the meetings would give the claimant a credit, he would, "make labor" in both of the months in question although without the meeting he would not. The claimant therefore falsified the documents for the two meetings. The administrative law judge is constrained to conclude on the evidence here that the claimant willfully and deliberately violated the employer's policies and deliberately and willfully falsified employer documents including time records indicating that he held employee meetings when he did not. He had received an oral warning for the first occasion on or about November 16, 2003. The claimant should have been aware that this conduct was inappropriate both through the warning and through the employer's rules of which the claimant was aware. Nevertheless, the claimant again failed to hold a meeting and again falsified records. The administrative law judge concludes that the claimant's acts were deliberate acts or omissions constituting a material breach of his duties and they evince willful or wanton disregard of the employer's interests and at the very least is negligence or carelessness in such a degree of recurrence all as to be establish disqualifying misconduct. The claimant's statements that he did so to, "make labor" so as to retain his job does not justify such deliberate falsifications.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of January 16, 2004, reference 01, is affirmed. The claimant, Chad W. Moss, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

kjf/b