

**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**

**STEVEN S MCROBERTS
104 LAKEVIEW DR
KNOXVILLE IA 50138**

**MINNESOTA MINING & MANUFACTURING
COMPANY
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0280**

**Appeal Number: 05A-UI-11230-S2T
OC: 09/25/05 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:

Steven McRoberts (claimant) appealed a representative's October 27, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Minnesota Mining & Manufacturing Company (employer) for dishonesty in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2005. The claimant participated personally. The employer participated by Sandy Bodine, Human Resources Manager; Craig Adams, General Supervisor; Peter Thomas, Supervisor; and Mylinda Heil, Supervisor. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 7, 1979, as a full-time compounder. The claimant received a copy of the Employee Manual. He worked the overnight shift, which was unsupervised. On April 5, 2005, the employer issued the claimant a performance review. The claimant had been taking an hour or two of vacation per night without advance warning. He did this when he was tardy or wanted to leave work early. The proper procedure was to place the vacation time on the company calendar one day in advance. The employer told the claimant during the review that he had to stop taking vacation time without advance notice. The employer impressed upon the claimant the need for the previous shift to communicate with the claimant before those workers left for the evening. After this warning the claimant took vacation 18 times without placing his vacation time on the calendar one day in advance of the vacation.

In August 2005, the employer became aware that an employee was incorrectly recording his time worked. The employer decided to look at all employees working on the claimant's unsupervised shift. The employer found that other employees made one or two mistakes in time recording from January 1 to August 19, 2005. The claimant incorrectly recorded his time repeatedly. The claimant recorded he was working 105 hours more than his electronic badge reported him being at work. The claimant repeatedly left early, came to work late and took vacation while recording he was working. Therefore, he was paid for 105 hours at \$19.08 per hour when he was not working. The claimant was suspended without pay on September 7, 2005. The employer terminated the claimant on September 23, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he 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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has established that the claimant was dishonest about his hours work with the intent to be paid money that he did not earn. Employee dishonesty is contrary to the standard of behavior the employer would have a right to expect. The employer has established that the claimant was discharged for misconduct.

DECISION:

The representative's October 27, 2005 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/kjw