

**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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**WHITE, ROBERT W ET AL
STRAFORD HOMES
LIMITED PARTNERSHIP
402 S WEBER AVE
P O BOX 37
STRATFORD WI 54484**

**Appeal Number: 04A-UI-09602-H2T
OC 08-08-04 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 30, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 28, 2004. The claimant did participate. The employer did participate through Nate Moore, Production Supervisor (representative); Rick McDuffy, Production Manager; and Rusty Clark, Floor Supervisor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a drywall hanger full time beginning May 10, 2004 through August 4, 2004 when he was discharged. The claimant and two of his coworkers got into a disagreement

over a fan in the work place on August 4, 2004. During the lunch period the claimant went to the car where Kevin Brown and Joe Babbit were eating lunch and told them that if they had a problem with him that it should be or could be settled by taking it across the street. The claimant made it clear to both Mr. Brown and Mr. Babbit that he wanted to fight them to resolve their differences. After lunch both Mr. Brown and Mr. Babbit complained to Mr. McDuffy about the claimant's threats against them and his desire to engage in a fist fight with one or both of them. Mr. McDuffy pulled the claimant aside to speak with him about what was said. Both Mr. Moore and Mr. Clark were present and heard the conversation between Mr. McDuffy and the claimant. During that conversation all three employer's witnesses indicate that the claimant admitted that he had threatened Mr. Brown and Mr. Babbit with a fist fight and tried to engage them in a fight to resolve their problems. The claimant was given a copy of the employer's handbook which clearly prohibits threatening a coworker with violence or engaging in violence with a coworker. The claimant had been previously disciplined on May 19, 2004 for asking another coworker to 'step outside' to resolve their differences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

An employer has a right to expect employees to conduct themselves in a certain manner. The employer can reasonably expect coworkers not to threaten each other to try to resolve their differences with fist fights. The more credible evidence is offered by all three employer's witnesses who each heard the claimant admit that he had tried to resolve his differences with Mr. Brown and Mr. Babbit by taunting them to engage in a fist fight with him. The employer's witnesses were not mistaken in what they heard the claimant admit. The claimant also admits that he received the employer's handbook or policy book which prohibits violence or threats of violence in the work place. The claimant disregarded the employer's rights by threatening to engage in a fist fight with his coworkers, conduct for which he had previously been disciplined. The claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits. Benefits are denied.

DECISION:

The August 30, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/s