

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 L HERMAN
2812 EVELYN DR SW
CEDAR RAPIDS IA 52404

BURNS ELECTRIC INC
6529 NW 6TH DR
DES MOINES IA 50313

Appeal Number: 04A-UI-12063-HT
OC: 10/03/04 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, Steven Herman, filed an appeal from a decision dated November 12, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 6, 2004. The claimant participated on his own behalf. The employer, Burns Electric, Inc. (Burns), declined to participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Steven Herman was employed by Burns from June 12 until October 1, 2004. He was a full-time electrician.

On September 30, 2004, the claimant received a paycheck which was short ten hours of overtime pay. He consulted with Assistant Business Manager Sandy Opstvedt at the local union hall. She said Owner Harold Burns could write him a separate check for the missing overtime hours. On October 1, 2004, the claimant talked to Mr. Burns and asked if he could be issued a separate check. The employer said the payroll had already been issued for that pay period and the claimant then said Mr. Burns should consult with Ms. Opstvedt about the situation. Mr. Burns replied, "What if I just pay you off right now?" A check was issued for the overtime hours and the eight hours the claimant had worked in the current pay period and he left.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 record establishes the claimant did not quit but was discharged by the employer. The precipitating event appears to have been the claimant requesting a separate check for the missing overtime hours. This is not misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of November 12, 2004, reference 01, is reversed. Steven Herman is qualified for benefits provided he is otherwise eligible.

bgh/kjf