

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

PHILLIP C TOWERY
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DAVENPORT IA 52803

SIVYER STEEL CORPORATION
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BETTENDORF IA 52722

Appeal Number: 05A-UI-00882-LT
OC: 12-19-04 R: 04
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)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 18, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 10, 2005. Claimant did participate. Employer did participate through Eric Willis.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time welder through December 23, 2004 when he was discharged. Claimant had taken money out of a coworker's wallet during the summer of 2004 but it was not reported to management until December 21. The lead man found the wallet without the cash outside and gave it back to the owner, Antonio Chavez and said he had seen claimant in the area of Chavez' locker earlier. Chavez approached claimant for the money and it was returned.

Claimant was suspended on December 21 pending investigation in which he did not indicate management had knowledge of the issue and said he found the wallet in the locker room, put the empty wallet on the supervisor's desk and kept the money in his pocket for safekeeping. During the hearing claimant recalled that Chavez already had the wallet when he retrieved his money.

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).

Claimant's multiple versions of the events from the investigation, to the fact-finding interview, to the hearing are sufficiently at odds that his credibility is impaired. It does not seem reasonable that a person who finds a wallet would separate the cash, putting it into his pocket, while placing the wallet with identification unattended on a desk. This is indicative of claimant's intent to retain the cash, even though the cash was returned when Chavez asked for it. The act is

current as employer did not become aware of it until December 21, 2004 and claimant did not claim otherwise until the hearing, even when it became clear he was going to lose his job. Benefits are denied.

DECISION:

The January 18, 2005, reference 02, 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.

dml/pjs