

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

ERIC E CARPENTER  
3223 WRIGHT ST  
DES MOINES IA 50316

ALL CLEAN OF IOWA INC  
PO BOX 42001  
URBAN DALE IA 50322

Appeal Number: 05A-UI-03107-HT  
OC: 02/20/05 R: 02  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, All Clean of Iowa, Inc. (All Clean), filed an appeal from a decision dated March 16, 2005, reference 01. The decision allowed benefits to the claimant, Eric Carpenter. After due notice was issued a hearing was held by telephone conference call on April 12, 2005. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Owner Emmett Schnathorst. Exhibit One was admitted into the record.

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: Eric Carpenter was employed by All Clean from January 18,

2003 until January 19, 2005. He was a part-time hood cleaner working in the late evening depending on the needs of the customers.

The claimant had received disciplinary actions on July 3, 2003 and February 6, 2004, for absenteeism. His performance review in September 2004, indicated his work was not satisfactory and his attitude was poor. A final job review and warning was given January 6, 2005, in which he was told his job was in jeopardy if his attendance did not improve.

The claimant was no-call/no-show to work on January 15 and 17, 2005. He was scheduled to be at work at 10:00 p.m. on January 18, 2005, and Owner Emmett Schnathorst called him that morning to ask if he was going to be in to work. Mr. Carpenter told him that the furnace had been out in his home for the last few days and the landlord was coming at 10:00 p.m. that night to fix it. The claimant lives with his wife and his parents, but did not offer any explanation as to why none of these people could be present to deal with the landlord, other than saying he did not want his wife to be there. He failed to come to work as scheduled and was discharged by Mr. Schnathorst on January 19, 2005.

Eric Carpenter has received unemployment benefits since filing a claim with an effective date of February 20, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised his job was in jeopardy as a result of his poor work performance and attendance. He did not participate in the hearing to explain why he had been no-call/no-show to work on January 15 and 17, 2005, and the judge must conclude he did not have any reasonable explanation for this failure. The final absence was allegedly due to having his landlord present at 10:00 p.m. to fix the furnace. There is no reasonable explanation as to why the claimant's wife or parents could not be present to deal with this and the judge concludes Mr. Carpenter's excuse was specious and a mere pretext for not coming to work as he had so often in the past. He was discharged for excessive, unexcused absenteeism which is misconduct under the provisions of the above Administrative Code section. He is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of March 16, 2005, reference 01, is reversed. Eric Carpenter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$760.00.

bgh/sc