

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**WINSTON B TUCKER**  
Claimant

**APPEAL NO. 12A-UI-13747-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WATERLOO COMMUNITY SCHOOL DIST**  
Employer

**OC: 10/07/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Winston Tucker, filed an appeal from a decision dated November 15, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 19, 2012. The claimant participated on his own behalf. The employer, Waterloo Community School District (Waterloo), participated by Human Resources Specialist Mickey Waschkat.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Winston Tucker was employed by Waterloo from December 19, 2011 until January 30, 2012 as a substitute janitor. As part of his job requirements he must have reliable transportation and provide current information on how to contact him.

The employer was unable to reach him at the phone number he had provided so scheduling Jill Jenson, talked to his girlfriend, Miatta, who was also a substitute janitor. Mr. Tucker was to report for work on January 23, 2012, but was no-call/no-show. He did not have reliable transportation and did not come to work. He remained unreachable with the information he had provided for the rest of that week because of phone problems. Finally he met with the supervisor on January 30, 2012, and was told he was fired because he had made himself unable to be contacted in violation of the provisions of his job.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant violated a basic tenant of his job requirements by not coming to work when needed, failing to update any contact information and making himself unavailable for assignments. The very purpose of a substitute worker is to be available, sometimes at the last minute, to fill in for regular employees. By being unavailable he could not perform the essential functions of his job. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of November 15, 2012, reference 02, is affirmed. Winston Tucker is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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