

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HASSAN A ADEN
Claimant

APPEAL NO. 11A-UI-02944-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM LTD
Employer

OC: 01/09/11
Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, ABM, filed an appeal from a decision dated March 9, 2011, reference 03. The decision allowed benefits to the claimant, Hassan Aden. After due notice was issued a hearing was held by telephone conference call on April 1, 2011. The claimant participated on his own behalf and Sirad Dahir acted as interpreter. The employer participated by Human Resources Manager Greg Stearns.

ISSUE:

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

FINDINGS OF FACT:

Hassan Aden was employed by ABM from April 1 through 15, 2010 as a full-time janitor. He was hired by Human Resources Director Greg Stearns and given an orientation by him as well. Mr. Stearns emphasized, in addition to other policies, that workers were to take nothing from the clients. This was also emphasized by the claimant's supervisor at the job site.

On April 14, 2010, the supervisor saw the claimant taking food from the client's break room and candy from one of the desks. He reported this to his supervisor, Carlos Cardenas, who came to the job site. He found the claimant smoking in his car and asked if he had taken food and candy. Mr. Aden said he did but that he did not know this was prohibited. Mr. Cardenas fired him at that time.

The next day, the claimant went to the ABM offices and spoke with Mr. Stearns. The human resources director repeated to Mr. Aden the reason he was fired and the claimant did not deny he took the food, only that he did not know he was not supposed to do that.

Hassan Aden filed a claim for unemployment benefits with an effective date of January 9, 2011. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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 willfully and deliberately violated company policy by taking food from the client. His assertion he was never told about the policy is not credible, as the person who oriented him spoke directly to that issue. Mr. Aden is guilty of theft from the client, which could have seriously impaired the business relationship between the client and the employer. 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 March 9, 2011, reference 03, is reversed. Hassan Aden is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw