

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABDULRASOOL S ELAIBI
Claimant

APPEAL NO. 10A-UI-16428-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SERVICE MASTER BUILDING
SERVICES INC**
Employer

**OC: 05/23/10
Claimant: Respondent (4-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Service Master, filed an appeal from a decision dated November 23, 2010, reference 07. The decision allowed benefits to the claimant, Abdulrasool Elaibi. After due notice was issued a hearing was held by telephone conference call on January 21, 2011. The claimant participated on his own behalf and Robert Talang acted as interpreter. The employer participated by President Austin Rice and Human Resources Manager Gregg Stearns.

ISSUE:

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

FINDINGS OF FACT:

Abdulrasool Elaibi worked for a Service Master franchise. There are two such franchises in the Des Moines, Iowa, area with similar names and addresses which differ by only one number. The notice of claim, the notice of the fact finding, the representative's decision and the notice of the appeal hearing were all sent to the wrong employer. The employer in this appeal is Service Master Building Services, Inc., with an account number of 247405-000 and an address of 7575 University Avenue, Clive, Iowa.

Mr. Elaibi actually worked for ABM Ltd., DBA Service Master Building Services, Inc. with account number 160060, and an address of 7555 University Avenue, Clive, Iowa.

This matter should be remanded to UIS for notice of claim to be sent to the employer with account number 160060.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 was not employed the employer with this account number and disqualification may not be imposed for any separation.

DECISION:

The representative's decision of November 23, 2010, reference 07, is modified in favor of the appellant. Abdulrasool Elaibi did not work for this employer and therefore account 247405 shall not be charged with benefits paid to the claimant.

This matter is remanded to UIS division for a new notice of claim to be issued to ABM Ltd. with account number 160060.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs