

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROLTON LAU
Claimant

**BOSTON WINDOW CLEANING INC
THE MILLARD GROUP**
Employer

APPEAL NO. 09A-UI-17336-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/27/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated October 29, 2009, reference 01, that held he was discharged for misconduct on September 27, 2009, and benefits are denied. A telephone hearing was held on December 23, 2009. The claimant did not participate. The employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds that: The claimant began employment on October 28, 2008, and last worked as a full-time cleaning person on June 8, 2009. The claimant was discharged on June 12, 2009 for violation of work rule #19 that is incurring three written warnings within one year, to wit: March 5, 2009; April 28; and June 3rd. The claimant was suspended on June 9, and discharged on June 12.

The claimant and employer representative were not available when called for 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 administrative law judge concludes that the employer did establish misconduct in the discharge of the claimant on June 12, 2009, for violation of a company rule.

Since the parties failed to participate, the best evidence is the information provided at fact-finding that established the claimant received three warnings within a one-year period that is a dischargeable offense, and constitutes job disqualifying misconduct.

DECISION:

The decision of the representative dated October 29, 2009, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on June 12, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs