

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALFRED L LITTLE**  
Claimant

**APPEAL NO. 14A-UI-02694-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARSDEN BLDG MAINTENANCE LLC**  
Employer

**OC: 02/16/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 7, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 2, 2014, in telephone conference call. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Alfred Little.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides commercial cleaning services. The claimant worked for the employer for approximately eight months. He was a part-time custodial worker. His last day of work was January 30, 2014. He was terminated on February 5, 2014. The reasons he was given for his termination was that he yelled at his supervisor; he refused to do what he was told to do; and he used profanity. The claimant did not do any of these things.

**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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The employer did not participate in the hearing. There was no evidence presented to show misconduct. The claimant testified that he was terminated for multiple offenses, to include yelling at his supervisor; refusing to perform assigned work; and using profanity. The claimant denied he did any of these things. Since there is no evidence to the contrary, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 7, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed if the claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/pjs