

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABDULRASOOL S ELAIBI**  
Claimant

**APPEAL NO. 11A-EUCU-00255-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABM LTD**  
Employer

**OC: 05/23/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 1, 2011, reference 08, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 29, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Jean Salib. Greg Stearns participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a janitor for the employer from September 16 to 23, 2010. The claimant was discharged for alleged insubordination on September 23. Management believed the claimant had refused to re-clean an area that was not satisfactorily cleaned and had thrown his cleaning rags at his supervisor. In fact, the claimant performed all the tasks assigned to him, had not thrown cleaning rags at this supervisor, and was discharged after he questioned a supervisor about why other workers were taking breaks when he was required to work.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such

degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and the employer did not have any firsthand witnessed as to what happened on the night of September 23. No work-connected misconduct has been proven by the preponderance of the evidence in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated March 1, 2011, reference 08, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw