

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS L QUINN
Claimant

APPEAL NO. 06A-UI-09934-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOSTON WINDOW CLEANING INC
Employer

**OC: 08/13/06 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Boston Window Cleaning (BWC), filed an appeal from a decision dated October 4, 2006, reference 03. The decision allowed benefits to the claimant, Thomas Quinn. After due notice was issued, a hearing was held on October 24, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Manager Brian Johnson and was represented by Paralegal Mariam Arguette.

ISSUE:

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

FINDINGS OF FACT:

Thomas Quinn was employed by BWC from August 5 until October 26, 2005. He was a full-time janitor working at the John Deere facility in Ankeny, Iowa. He received training for one month, twice the normal amount of training. He was assigned to clean 16 bathrooms/locker rooms in two separate buildings.

On September 8, 2005, shortly after he began working on his own, the claimant received a written warning for unsatisfactory job performance. He was not doing all the of assigned tasks in each of the bathrooms, or he was doing them below acceptable standards. Manager Brian Johnson issued the warning and the claimant said he had trouble remembering all the required tasks. The manager then made arrangements for him to pick up a daily checklist before each shift which would tell him every one of his duties.

Even when he would remember to pick up the checklist, the claimant would still not do his work as required. He would say he lost the checklist or left it somewhere and that is why his work performance would be worse at the end of the shift than at the beginning. He could have returned to the office for another checklist, but he never did.

Mr. Quinn received further progressive discipline on September 25, 29, October 2, and 9, 2005, all for unsatisfactory work performance. The final warning was a three-day suspension and a warning that his job was in jeopardy. After the warnings, the claimant's performance would improve for a few days but would quickly deteriorate to a sub-standard level.

On October 25, 2005, the claimant failed to clean mirrors, sinks and showers in the bathrooms assigned to him and he was issued the final warning and discharge on October 26, 2005.

Thomas Quinn has received unemployment benefits since filing a claim with an effective date of August 13, 2006.

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 had been advised his job was in jeopardy as a result of his poor work performance. He was capable of doing the job to an acceptable level as evidenced by his improved performance after a warning. The excuse that he had lost his checklist is not credible, as he could have gotten another one but he chose not to. The record establishes the claimant engaged in a course of conduct where he deliberately refused to work to the best of his ability in performing his job duties. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 4, 2006, reference 03, is reversed. Thomas Quinn is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$528.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw