

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD J PAULDING

Claimant

APPEAL NO. 12A-UI-03063-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH

Employer

OC: 01/29/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 26, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 7, 2012. Claimant participated. The employer participated by Ms. Sandra Linsen, Hearing Representative and witness, Mr. Dan Burkey, District Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Richard Paulding was employed by ABM Janitorial Services North from October 10, 2003 until January 20, 2012 when he was discharged from employment. Mr. Paulding worked as a full-time floor specialist assigned to work at the Des Moines airport. Mr. Paulding was paid by the hour.

The claimant was discharged after he was personally observed by the company's district manager sitting in a janitorial closet being unproductive 36 minutes before the end of his work shift. When the district manager asked what the claimant was doing Mr. Paulding responded, "Waiting for my shift to end."

The claimant had received three verbal reprimands from the district manager for being unproductive and sitting idle in the workplace. Mr. Paulding had received a number of warnings for unsatisfactory work performance. The claimant had not provided any medical documentation to the company indicating that he was unable to perform his work. The claimant had not requested to be off work early that day or indicated in any manner that he was unable to perform his duties.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that the claimant was discharged when he was personally observed by the company's district manager being intentionally unproductive substantially before the end of his work shift. The claimant was observed sitting in a janitorial closet indicating that he was "waiting for the shift to end." The claimant did not indicate any medical problems and was aware that the company expected him to continue to perform his duties until the end of his work shift. The claimant had taken his lunch break and the authorized 15-minute break that night but chose to discontinue working before the end of the shift although he had been previously warned by the district manager. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 26, 2012, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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