

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL C MCLAUGHLIN
Claimant

APPEAL NO. 11A-UI-05218-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORWALK COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 03/20/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Norwalk Community School District (employer) appealed a representative's April 8, 2011 decision (reference 01) that concluded Michael McLaughlin (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 13, 2011. The claimant participated personally and through former co-worker, Violet Espinoza. The employer participated by Kate Baldwin, Business Manager, and Richard Sleeth, Buildings Director.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 4, 2010, as a full-time building custodian. The employer has a handbook but did not give the claimant a copy of the handbook. The employer told the claimant he could find it on the internet. The employer has a progressive disciplinary system. The employer did not issue the claimant any warnings during his employment. The employer believed that custodians should have no interactions with students.

At the time of his hire the employer trained the claimant on his cleaning duties. From watching his mentor and other custodians the claimant thought it was acceptable to speak and smile at the children. One teacher gave the claimant a friendly notice that the claimant should be careful regarding his interactions with students.

On March 10, 2011, a student took a ball that was part of the claimant's clean tools. The student left. There were no teachers or supervisors in the building. The claimant did not want to cause trouble for the student. He put a note on the student's locker asking for the student to return the ball. On March 14, 2011, the employer terminated the claimant for interacting with a student.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 8, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css