

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIE D BUEFORD
Claimant

APPEAL NO. 07A-UI-10795-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMCO CORPORATION
Employer

**OC: 10/07/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Kimco, filed an appeal from a decision dated November 14, 2007, reference 01. The decision allowed benefits to the claimant, Willie Bueford. After due notice was issued, a hearing was held by telephone conference call on December 10, 2007, and concluded December 20, 2007. The claimant participated on his own behalf and with witnesses Ray Wruble and Jenne Minelli. He was represented by Attorney Chris Coppola. The employer participated by Senior Area Manager Kim Kramer and was represented by National Employers Council in the person of Chris Hunter. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Willie Bueford was employed by Kimco from April 27, 2003 until July 16, 2007, as a full-time lead retail technician. He was in charge of the janitorial crew that cleaned the JC Penneys store in West Des Moines, Iowa. On June 14, 2007, the client store failed an in-house inspection, receiving a score of 61 when 85 was needed to pass. Senior Area Manager Kim Kramer inspected the store himself on behalf of the employer on June 26, 2007, and found equipment not properly stored, the crew was not performing its job duties as required, and dusting was not being done. He counseled the claimant about his need to improve the work crew, which, as its supervisor, was his responsibility. He was notified his job was in jeopardy and Mr. Bueford said he would “work on it.”

On July 10, 2007, the claimant received a written warning from Mr. Kramer because the store was still not being cleaned according to the Service Level Agreement (SLA). The store manager and the district manager for JC Penneys were upset the store was not meeting the SLA requirements.

Mr. Bueford had received warnings in the past about not supervising his crew to make sure they were performing to the required standard. Finally, after another inspection by Mr. Kramer on July 16, 2007, he found the SLA standards were still not being met and discharged the claimant.

The claimant had previously worked for JC Penneys in its maintenance department with a crew of 12 people. When the maintenance was subcontracted to Kimco, the crew was reduced to six people. With the reduced crew, Mr. Bueford had cleaning duties he had to perform that did not leave him adequate time to supervise the crew. He had spoken with district managers throughout the course of his employment requesting additional crew to work to make sure the cleaning duties were being done. Kimco had not only reduced the number of people on the crew but the number of hours they were to work.

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 record establishes the claimant was fired because the cleaning crew was not working to the satisfaction of the client store. However, the number of crew members and the hours available had been drastically reduced by the employer until he had less than half the resources he had while doing the maintenance duties as an employee of JC Penneys.

There is no evidence the claimant's failure to keep the store clean according to the SLA was due to any willful and deliberate course of conduct meant to harm the employer. Kimco did not

provide him with the means necessary to do his job as required and cannot therefore fault him for failing to do it. Misconduct has not been established and disqualification may not be imposed.

DECISION:

The representative's decision of November 14, 2007, reference 01, is affirmed. Willie Bueford is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw