

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF SIBLEY
Claimant

APPEAL NO: 15A-UI-00199-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIVERSITY OF DUBUQUE/BUS OFFICE
Employer

OC: 12/07/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 2, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 30, 2015. The claimant participated in the hearing. Julie McTaggart, Human Resources Director; Craig Kloft, Director of Facilities; and Laura Schauer, Security Supervisor; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time custodian for University of Dubuque from October 21, 2002 to December 4, 2014. He was discharged because the employer believed he committed theft.

On August 20, 2014, Director of Facilities Craig Kloft noticed a shower and toilet cleaning solution, Surebet, was being used excessively in the dorm cleaned by the claimant. On October 2014 the employer had a lead custodian go into the claimant's building when the claimant was not there and check the equipment that dispenses the Surebet product to insure the machine was dispensing the product properly and found it was.

Of three similar dorms, including Casset Hall, which was cleaned by the claimant, between August 2014 and January 2015, Aitchison Hall used 18 bottles of Surebet; Dannell Hall used nine bottles of Surebet; and Casset Hall used 71 bottles of Surebet. The employer was trying to determine why the claimant's Surebet usage was so high in comparison to the other two comparable dorms.

In November 2014 the employer consulted Security Supervisor Laura Schauer and the decision was made to place security cameras in the custodian's closet and a storage closet across the

hall in Cassat Hall. When installing the cameras the employer found four bottles of Surebet hidden in a box in the corner of the storage closet covered with pillows.

Ms. Schauer reviewed the surveillance footage daily. On November 13, 2014, the video showed the claimant place something under his sweatshirt and then put his jacket on and smoothed out his sweatshirt in an effort to conceal what the employer determined to be a toilet brush. On November 13, 2014, the claimant took a plastic spray bottle nozzle, the plastic tube that goes into a plastic spray bottle used to spray Surebet, and placed it in the plastic bag he used to carry his lunch and other personal property to and from work. On December 3, 2014, the claimant reached back into the closet and grabbed two handfuls of plastic gloves and put them in his jacket pocket. After reviewing those three incidents, the employer terminated the claimant's employment December 4, 2014, for theft.

The claimant also cleaned the University's day care center toilets and restrooms from 5:00 a.m. to 6:00 a.m. He acknowledged he took the toilet bowl brush November 13, 2014, because it was new and he needed one to clean the daycare restroom. He testified he concealed it because he was embarrassed to be seen walking through the halls of the building in front of students with a toilet brush.

He testified on November 25, 2014, he took the plastic spray bottle nozzle that was used and had deteriorated from the use of the chemicals in Surebet.

He also admitted to taking two handfuls, 14 pairs, of gloves to use at the daycare center because despite the fact he had requested large gloves they had not been supplied yet and the claimant needed some large gloves when cleaning the daycare toilets and restrooms.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 claimant removed a toilet brush from his Casset Hall supply closet November 13, 2014, to use at the University's daycare building which he also cleaned and which was lacking supplies despite the fact he had ordered those items. He agrees he took the plastic spray bottle nozzle that went into the Surebet bottles and was eroded by the chemicals in that product and may not have even been functional at the time he took it November 25, 2014. Finally, he admits he took the rubber gloves November 25, 2014, to use at the daycare center because he needed large gloves but the daycare only had medium gloves.

The employer had two cameras installed in the claimant's work closets in November 2014 and monitored those cameras daily. Between the dates the cameras were placed in the closet in November 2014 through December 3, 2014, the employer only observed the claimant remove three items from the closets. It placed the cameras expecting to learn the claimant was taking Surebet due to the high usage of that product in the dorm he cleaned but that did not occur and there were no incidents of the claimant taking any Surebet. The employer acknowledges that if the claimant removed the toilet brush and gloves to use when performing his duties at the daycare center his actions would not be considered theft.

Under these circumstances the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The January 2, 2015, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs