

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**EDWARD JOHNSON
202 – 31ST ST NE #3
CEDAR RAPIDS IA 52402**

**METRO AREA HOUSING PROGRAM INC
3351 SQUARE D DRIVE SW
CEDAR RAPIDS IA 52404-3917**

**Appeal Number: 04A-UI-07774-ET
OC: 06-20-04 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 8, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 9, 2004. The claimant participated in the hearing. Jennifer Barten, Human Resources Administrator; Marilyn Heaverlo, Director of Property Management; and Mary Husmann, Property Management Coordinator, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 maintenance specialist for Metro Area Housing Program from August 11, 2003 to June 16, 2004. On June 9, 2004, the claimant left the office at 2:45 p.m. and said he was going to Agan Court to clean up the hallways and pick up the yard and the trash. The maintenance supervisor called the employer at 4:00 p.m. and said the claimant had not been to that location. On June 11, 2004, the employer met with the claimant about the situation and the claimant stated he was at Agan Court and named two tenants that could verify his presence. Marilyn Heaverlo, Director of Property Management, went to the site and spoke to one of the tenants the claimant stated he spoke to and that person did not remember seeing the claimant. Ms. Heaverlo could not locate the other tenant listed by the claimant. The employer terminated the claimant's employment June 16, 2004, for not being at his assigned work location. During the appeal hearing the claimant read a statement from the second tenant indicating he did recall seeing the claimant on the premises June 9, 2004. On March 31, 2004, the employer issued a written warning to the claimant regarding his attendance, work performance and conduct (Employer's Exhibit One). The warning stated that any further problems could result in disciplinary action, up to and including termination (Employer's Exhibit One).

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant's testimony was not particularly credible, the administrative law judge cannot conclude by a preponderance of the evidence that the claimant was not at his designated work area June 9, 2004, because one tenant indicated he was there and another indicated he did not see him. Consequently, the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law and benefits must be allowed.

DECISION:

The July 8, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b