

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEXANDER TORRES**  
Claimant

**APPEAL NO. 11A-UI-07476-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 05/15/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Alexander Torres (claimant) appealed a representative's June 6, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Packers Sanitation Services (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 30, 2011. The claimant participated personally through Olga Esparza, interpreter. The employer provided a telephone number but could not be reached at the time of the hearing. A message was left for the employer. The employer did not respond by the time the record closed.

**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 having considered all of the evidence in the record, finds that: The claimant was hired on November 17, 2010, as a full-time scrubber. The claimant injured his back at work earlier in his employment.

On May 10, 2011, the claimant was working a hot area with a solution that had an acid base. The claimant was sweating and the chemical got into his eyes. The claimant rinsed his eyes for three hours and asked the employer to send him to a doctor. The employer refused. The claimant left work and went to the emergency room. The physician told the claimant that his cornea was burned by the chemicals and he could not work for two days. The claimant immediately notified the employer that he could not return until May 12, 2011. On May 12, 2011, the claimant returned to work. The employer suspended the claimant until May 16, 2011, for failure to appear for work for two days. On May 16, 2011, the employer terminated the claimant for having two injuries at work.

**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). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's June 6, 2011 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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