

**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**

**JAAY D WYNKOOP
309 FUNK ST
WEBSTER CITY IA 50595**

**EAGLE SANITATION LLC
PO BOX 573
WEBSTER CITY IA 50595**

**Appeal Number: 04A-UI-07937-H2
OC: 06-13-04 R: 01
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 14, 2004, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held in Fort Dodge, Iowa on August 11, 2004. The claimant did participate. The employer did participate through Chris Kehoe, Manager of Operations and Neil Wright, Owner. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a route driver full time beginning March 14, 2003 through June 14, 2004 when he was discharged. On June 10, 2004, the claimant and Mr. Kehoe were discussing the claimant's daily work assignment and the claimant had been given two extra

work tickets for the day. The claimant asked Mr. Kehoe that no additional work assignments be given to him that day, as he wanted to be done working before 5:00 p.m. that night as he had plans to spend time with his son that night. Mr. Kehoe told the claimant not to worry about his after work extra curricular activities. The two began to argue about Mr. Kehoe's calling the claimant's son an 'extra curricular' activity. The claimant never refused to perform the work assigned to him on June 10, 2004. Mr. Kehoe did not like the claimant asking why additional work was being assigned to him. The claimant did not physically or verbally threaten Mr. Kehoe or any customers of the employer. The claimant had been disciplined previously for theft from the company.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The final incident for which the claimant was discharged was for arguing with Mr. Kehoe about his work assignment on June 9, 2004. The claimant never refused to perform any of the work that was assigned to him on that day. The claimant merely asked for no additional assignment to be given to him because he wanted to spend some time that evening with his son. The claimant did not threaten any coworkers, including Mr. Kehoe, or any customers of the business. Balking or argumentative conduct is not necessarily disqualifying. The claimant had never previously been disciplined for arguing with his supervisor. While the argument may not have been proper conduct by the claimant, the conduct does not rise to the level of disqualification by standards of either frequency or severity. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 14, 2004, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf