

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RORY L BOWEN**  
Claimant

**APPEAL NO. 14A-UI-01959-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL CLEAN OF IOWA INC**  
Employer

**OC: 01/19/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated February 11, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 12, 2014. Claimant participated. The employer participated by Mr. Emmett Schnathorst, Company President and Ms. Jill Schatz, Company Scheduler.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Rory Bowen was employed by All Clean of Iowa, Inc. from February 27, 2012 until January 22, 2014 when he was discharged from employment. Mr. Bowen was employed as a part-time waste hauler and was paid by the hour. His immediate supervisor was Jill Schatz.

Mr. Bowen was discharged on January 22, 2014 for recurrent failure to follow reasonable work instructions and procedures given to him by his employer. Mr. Bowen had received numerous warnings from the employer regarding his performance and adherence to company rules and time reporting. A decision had been made in December of 2013 to discharge Mr. Bowen for his repeated failure to follow company policy, however, the claimant was given a "last-chance" warning and a final opportunity to adhere to company expectations. Mr. Bowen was placed upon a disciplinary probation and given a comprehensive statement of employer expectations.

A decision was made to terminate Mr. Bowen when the claimant continued his pattern of not completing jobs assigned to him and failing to submit daily time records as required. The final incident that cause the claimant's discharge took place on January 16, 2014. On that date Mr. Bowen was scheduled to report to Carroll, Iowa, at 1:30 p.m. to begin services for a client at that location. Mr. Bowen did not report to the client location as scheduled and instructed but instead went to the company's warehouse where he apparently left his personal vehicle while he cashed his paycheck. The claimant's time reporting for that day had substantial

discrepancies regarding the claimant's location and the duties that he was performing. Subsequently, the claimant called and indicated that he could not complete the assignment. After reviewing the claimant's time reporting for that day and the actual occurrences, the employer reasonably concluded that Mr. Bowen was intentionally misreporting his time and activities as well as not following the instructions to report to the client locations instead of the company's warehouse facilities that day.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand the claimant was discharged because he violated the terms of a previous disciplinary probation that had been placed upon him. On January 16, 2014, the claimant inaccurately reported his timecard, his work locations and duties. The claimant had not gone to the client location as directed but had come to the company warehouse to pick up his check and then had left to cash the check instead of performing the duties that he had been assigned. The claimant continued to fail to turn in timecards on a daily basis as previously instructed and had made inappropriate comments regarding the company's time scheduler and the requirement that he turn in timecards each day.

Based upon the hearing record, the administrative law judge concludes that the employer has sustained its burden of proof in establishing intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated February 11, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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