

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E REDMOND
Claimant

APPEAL NO. 06A-UI-10090-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PROFESSIONAL BUILDING SERVICES OF
THE QUAD CITIES**
Employer

**OC: 09/17/06 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

William Redmond (claimant) appealed a representative's October 6, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Professional Building Services of the Quad Cities (employer) for wanton carelessness in performing his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2006. The claimant participated personally. The employer participated by Kathy Witcher, Operations Manager, and Chad Johnson, President.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 27, 2005, as a full-time Dubuque branch manager. The claimant supervised cleaning crews that services 17 accounts. The claimant did not supervise the cleaning of floors.

The employer had a conversation with the claimant on May 2, 2006, when one account complained and quit the employer because of unclean floors and monetary concerns. On August 17, 2006, the employer had a conversation with the claimant about a complaint from a difficult account. The claimant did not understand that he had received any warnings or that his job was in jeopardy.

On or about the end of August 2006, the claimant requested one of his three available weeks of vacation. He told the employer that he need to care for his terminally ill wife. He stated that he might take another week of vacation or use Family Medical Leave. While the claimant was on vacation, the employer received a complaint from an account. On September 12, 2006, the employer telephoned the claimant and told him he was terminated.

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.

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. The employer did not provide sufficient evidence of misconduct at the hearing. The claimant was unaware that the employer was unhappy with his work. The employer did not give the claimant any indication or written warning regarding the claimant's performance. The claimant could not have improved his performance if he did not know what he should improve. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 6, 2006 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs