

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL M BAILEY
Claimant

APPEAL NO. 09A-UI-06767-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMPCO SYSTEM PARKING
Employer

OC: 03/29/09
Claimant: Appellant (1)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 4, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 28, 2009. Claimant participated. Employer participated by Sharon Lanies, Operations Manager in Des Moines. The employer was represented by Lisa Harroff, who is affiliated with TALX Employer Services. The record consists of the testimony of Sharon Lanies; the testimony of Paul Bailey; and Employer's Exhibits 1-3.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on December 30, 2005, as a special projects maintenance worker. He was responsible for performing such tasks as repairing drywall; replacing and repairing light fixtures; and plumbing. The employer manages the municipal parking for the City of Des Moines.

On February 24, 2009, Ms. Lanies received a telephone call from the city concerning an area of drywall that was leaking moldy water. The city wanted this problem repaired right away. Ms. Lanies contacted Mr. Bailey to discuss possible solutions to the problem. A different ventilation system was tried, but the problem persisted. The city then requested that this area of drywall be cut out and replaced. The claimant did not feel that this was a good idea. He agreed that he was supposed to do what he was requested to do but he simply did not feel that he

could do the job in good conscience. He suggested that Ms. Lanies send him home for three days without pay. He hoped that a different solution would be proposed.

When the claimant returned after his three days off, Ms. Lanies told him that the city wanted the drywall replaced and asked the claimant to do the job. He refused. His refusal was insubordination under the employer's written policies and led to his termination.

REASONING AND CONCLUSIONS OF LAW:

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.

It is undisputed in this case that the employer specifically requested that the claimant remove and replace a piece of drywall and that he refused to do so. The claimant's reason for not performing the requested task was his personal belief that the repair would be a waste of money and would not solve the problem. He knew that he was being insubordinate and that he could be terminated.

An employer can reasonably expect that an employee will perform directed work, particularly when that work falls within the employee's job description. The claimant may not have agreed with the proposed solution, but that subjective belief does not qualify the claimant for

unemployment benefits when termination results. The claimant deliberately refused to do work for which he was hired, which evinces a willful disregard of the employer's interests. The employer was contracted to operate and maintain the city's parking areas and was obligated to do repairs as directed by the city. The claimant's refusal directly interfered with the employer's interest in complying with direction of the city and therefore constitutes misconduct.

DECISION:

The decision of the representative dated May 4, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css