

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

JOSEPHINE HERNANDEZ  
314 N 12<sup>TH</sup> AVE  
MARSHALLTOWN IA 50158

ABM INDUSTRIES INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 05A-UI-06325-CT  
OC: 05/22/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

ABM Industries (ABM) filed an appeal from a representative's decision dated June 10, 2005, reference 01, which held that no disqualification would be imposed regarding Josephine Hernandez' separation from employment. After due notice was issued, a hearing was held by telephone on July 7, 2005. The employer participated by Tricia Price and Dee Hunter, Project Managers; Misty Martin, Supervisor; Shawn Feilmeir, Operations Assistant; and Sue Shepley, Account Manager. The employer was represented by Lucie Hengen of Employers Unity. Exhibits 1 through 14 were admitted on the employer's behalf. Ms. Hernandez did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hernandez was employed by ABM from December 19, 2003 until May 27, 2005 as a full-time housekeeper at Iowa Veterans' Home. She was discharged because of repeated violations of the employer's policies.

On March 25, 2005, Ms. Hernandez received a written warning after a banana was found in her custodial closet. Housekeepers are not to keep food in the custodial closets because of the possible contamination from chemicals stored there. The employer also has a policy requiring that all chemicals used by housekeepers be kept locked on the custodial cart when not in use. The policy is intended to make sure chemicals are not accessible to residents and others. Ms. Hernandez underwent additional training regarding custodial carts on November 16, 2004. On April 5, 2005, she received a written warning because her custodial cart was found unlocked. She was advised that any further violations of policy would result in further disciplinary action, up to and including termination.

The final incident that caused the discharge occurred on May 24, 2005. Ms. Hernandez mopped the floor of an elevator, put a "wet floor" sign on the floor outside the elevator, and then released the elevator back into service. She did not put a "wet floor" sign on the floor of the elevator car itself. There was nothing to alert passengers boarding the elevator on other floors that the floor was wet. Ms. Hernandez was suspended and notified of her discharge on May 27, 2005. She had received warnings other than those referred to herein. However, pursuant to the employer's policy, warnings that are more than 180 days old cannot be used for disciplinary purposes.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hernandez was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In making the decision to discharge, the employer only considered those warnings that had been on file for 180 days or less. This means that the warnings Ms. Hernandez received on May 6 and September 27, 2004 were not part of the reason for the discharge.

Of her current warnings, Ms. Hernandez had one for leaving her cart unlocked, one for having a banana in her custodial closet, and one for not putting a "wet floor" sign in the appropriate place. Although the actions were in violation of policies, they were not so substantial as to evince a willful and wanton disregard of the employer's interests or standards. The actions represented isolated lapses in good performance. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as the conduct complained of in this matter does not rise to the level of disqualifying misconduct, no disqualification is imposed.

#### DECISION:

The representative's decision dated June 10, 2005, reference 01, is hereby affirmed. Ms. Hernandez was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc