

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

RICK A EDLEMAN
990 WILMOT ST
CENTRAL CITY IA 52214

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

Appeal Number: 05A-UI-05663-JTT
OC: 04/24/05 R: 03
Claimant: Respondent (2)

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 for Misconduct

STATEMENT OF THE CASE:

ABM Industries filed a timely appeal from the May 15, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 15, 2005. Rick Edleman participated. Sandy Fitch of Employer's Unity represented the employer and presented testimony through Area Supervisor Karen Clement and Project Manager Kathy Howell. Exhibits One through Eleven were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rick Edleman was employed by ABM industries as a part-time general cleaner from January 3, 2003 until February 16, 2005, when Area Supervisor Karen Clement discharged him for misconduct based on violation of company policies and insubordination. Mr. Edleman worked

6:00-10:00 p.m., Monday through Friday. Mr. Edleman was assigned to clean office space maintained by ABM client McLeod Telecommunications.

The final incident that prompted the discharge occurred on February 9, 2005. On that date, Project Manager Kathy Howell and Supervisor Tim Gilbert observed Mr. Edleman laughing and talking with McLeod Employees. This incident occurred immediately following a meeting between Ms. Howell and Mr. Edleman, at which Ms. Howell had issued two written reprimands to Mr. Edleman. Ms. Howell had directed Mr. Edleman to return to his duties after the meeting. Instead, Mr. Edleman made a beeline for the McLeod employees and appeared to make light of his circumstances. On February 10, Area Supervisor Karen Clement suspended Mr. Edleman for three days because of the conversation with the McLeod employee(s). The suspension was to commence on February 11. Mr. Edleman was to meet with Ms. Clement and Ms. Howell on February 16, at which time the employer would decide whether Mr. Edleman would continue in the employment. Mr. Edleman refused to read or sign the reprimand.

ABM has written work rules, a copy of which Mr. Edleman received at the time of hire. Work rule number 13 prohibited Mr. Edleman from approaching McLeod employees for any purpose. The work rule prohibited Mr. Edleman from conversing with McLeod employees or establishing any type of relationship with McLeod employees. Ms. Howell deemed Mr. Edleman's conversation on February 9 a violation of the work rule and reported the violation to Area Supervisor Karen Clement.

One of the reprimands issued to Mr. Edleman at the time of the meeting on February 9 was issued because Mr. Edleman had left cleaning supplies in a waste basket within a cubicle, rather than storing the items in the designated locked closet. Mr. Edleman had stored the items where he did as a matter of convenience. Mr. Edleman's behavior was in violation of McLeod policy and a McLeod representative complained to Ms. Howell on February 8. On February 8, Ms. Howell instructed Mr. Edleman to use a different container to carry his supplies with him and Mr. Edleman refused. Mr. Edleman balked when Ms. Howell directed him to store his cleaning supplies in the designated area. The employer deemed Mr. Edleman's behavior insubordination in violation of the employer's work rule number 9. The written reprimand warned Mr. Edleman that further insubordinate behavior would result in a three-day suspension without pay and subject him to possible discharge. Mr. Edleman refused to sign the reprimand.

The other reprimand issued to Mr. Edleman at the time of the meeting on February 9 was issued because Mr. Edleman did not take his break in the approved area, but instead took his break with McLeod employees who were working at their workstations at the time. This behavior was in violation of the employer's work rule number 20, which imposed clear rules governing employee breaks. Mr. Edleman's conduct was also in violation of McLeod policy. The written reprimand warned Mr. Edleman that continued failure to follow the rules governing breaks would result in a three-day unpaid suspension and subject him to possible discharge. Mr. Edleman refused to sign the reprimand.

On December 30, 2004, Mr. Edleman had received a reprimand for insubordination. Mr. Edleman had responded to his supervisors' concerns about him not accomplishing his duties in a timely fashion by telling the supervisors that he was not paid enough to do more work and that if he was not doing his job, they should fire him. Mr. Edleman refused to sign the reprimand.

On December 22, 2004, Mr. Edleman received a written reprimand for failing to appear for a safety meeting, despite being advised of the need to attend minutes before. Mr. Edleman refused to read or sign the reprimand.

On August 18, 2004, Mr. Edleman received a written reprimand for failing taking breaks that were too long. Mr. Edleman refused to sign the reprimand.

Mr. Edleman established a claim for benefits that was effective April 24, 2005 and has received benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Edleman was discharged for misconduct in connection with his employment. 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.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes that on February 9, Mr. Edleman refused the employer's reasonable instructions to return to his duties after the meeting. Mr. Edleman did not have good cause for failing to follow the employer's instructions to return to work. While the employer's work rule regarding conversing with McLeod employees was in some respects overly strict and unreasonable, the rule as it pertained to Mr. Edleman discussing and making light of his reprimand was reasonable. Mr. Edleman lacked good cause for failing to follow the employer's rule against discussing such matters with McLeod employees.

The evidence in the record further establishes that the employer's rules regarding storage of cleaning materials and the means by which Mr. Edleman should keep his supplies with him were reasonable. Mr. Edleman lacked good cause for refusing to follow the employer's instructions. Likewise, the employer's rules regarding breaks were reasonable and Mr. Edleman lacked good cause for his intentional failure to follow those rules. The employer's rule that Mr. Edleman attend safety meetings was reasonable and Mr. Edleman lacked good cause for deliberately failing to attend.

The evidence in the record establishes a pattern of behavior on the part of Mr. Edleman wherein Mr. Edleman did as he pleased and deliberately disregarded or refused to follow the employer's reasonable instructions regarding the performance of his duties.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Edleman was discharged for misconduct in connection with the employment. Accordingly, Mr. Edleman is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is then otherwise eligible. The employer's account will not be assessed for benefits paid to Mr. Edleman.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The benefits Mr. Edleman has received constitute an overpayment, which Mr. Edleman will have to repay.

DECISION:

The Agency representative's decision dated May 15, 2005, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be assessed for benefits paid to the claimant. The claimant is overpaid \$1,118.00.

jt/pjs