

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNNY SANDERS**

Claimant

**APPEAL NO: 13A-UI-04224-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**

Employer

**OC: 03/10/13**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Packers Sanitation Services, Inc. (employer) appealed an unemployment insurance decision dated March 29, 2013, reference 01, which held that Johnny Sanders (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2013. The claimant participated in the hearing. The employer participated through Chris Heaton, Account Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 employed as a full-time laborer from December 21, 2010 through January 22, 2013 when he was terminated. The employer could not provide evidence as to whether any previous warnings were issued but the claimant admitted he received a previous verbal warning for damaging a hotel room in California. No dates or further details were provided except that the employer said the damage was \$1,200.00. The claimant said the damage was \$710.00 and he denied damaging the room but agreed to pay for it to save his job. He said there was another employee there named Johnny but this employee had already left and the claimant believes the other employee caused the damage.

Shortly before termination, the claimant was out of town working on a job and had to share a hotel room with a co-worker. During his off-time, the claimant had some liquor to drink and he was locked in the bathroom talking to a girl. The girl had to call him back and he was waiting for the call when he fell asleep on the stool. The roommate was angry because he could not get into the bathroom and he went to get the account manager, who had the hotel manager open the door.

A few days later, a hotel employee told the account manager that the claimant had her send pics to some girl and the pics showed the claimant in his underwear. The claimant admitted he had the hotel clerk help him with his new phone but he said he was wearing sweatpants and no shirt. He did not think there were any issues because he was on a friendly basis and frequently talked to this clerk. The final incident was the claimant sleeping in his bed with a cigarette. He denies the cigarette was lit and testified the roommate took a picture of it. The employer offered an email in which the account manager said the cigarette was lit but this particular account manager did not participate in the hearing. The claimant was sent home and discharged after that.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The issue is not whether the employer made a correct decision in separating claimant, but whether the

claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was discharged on January 22, 2013 for "problems at the super 8 hotel." The employer witness offered scant evidence and could not provide the date of hire as he did not have the personnel records. The evidence does not establish any intentional wrongdoing by the claimant. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* Additionally, the final incidents which led to the discharge occurred while the claimant was off duty. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated March 29, 2013, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs