

**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**

**JEREMY D TACKETT
3651 AVE C
COUNCIL BLUFFS IA 51501**

**JUSTRITE JANITORIAL SERVICES INC
1333 LEW ROSS RD
COUNCIL BLUFFS IA 51501**

**Appeal Number: 06A-UI-06053-S2T
OC: 05/07/06 R: 01
Claimant: Appellant (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, 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:

Jeremy Tackett (claimant) appealed a representative's May 31, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Justrite Janitorial Services (employer) for dishonesty in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2006. The claimant participated personally. The employer participated by Linda Siefken, President.

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 January 16, 2006, as a full-time floor

maintenance person. The claimant was repeatedly unreachable by the employer during work hours. He failed to perform work the employer requested of him. The employer warned the claimant to perform the work and be available. The employer found the claimant falsified his time card, reporting he worked hours when he did not. The last time the claimant did this was on May 3, 2006. The employer told the claimant not to charge cigarettes on the employer's credit card or he would be terminated. The claimant did so anyway because he did not have his own money for cigarettes. A new truck and trailer were damaged while in the claimant's and a co-worker's care. The two returned the property on May 3, 2006, but did not report the damage to the employer.

The claimant began shouting loudly at his brother, a co-worker, regarding the damage to the vehicles. The employer had enough and terminated the claimant on May 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant discharged for misconduct. For the following reasons, the administrative law judge concludes he was.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by repeatedly failing to follow instructions, securing the employer's assets and falsifying time records. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 31, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

bas/kkf