

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J ACKLEY**  
Claimant

**APPEAL NO. 10A-UI-07201-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABM JANITORIAL SERVICES  
NORTH CENTRAL INC**  
Employer

**Original Claim: 04/18/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Michael J. Ackley filed a timely appeal from an unemployment insurance decision dated May 13, 2010, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held initially on July 16, 2010, with Mr. Ackley participating. Account Manager Dee Hunter testified for the employer, ABM Janitorial Services, which was represented by Deniece Norman of Employer's Edge. The hearing was recessed until August 4, 2010, so that exhibits submitted by the employer could be provided to the claimant. The same people participated in the conclusion of the hearing on August 4.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael J. Ackley was employed by ABM Janitorial Services from December 19, 2002, until he was discharged April 23, 2010. He worked as a general cleaner. The final incident occurred on April 20, 2010, when Mr. Ackley argued loudly and profanely with a coworker while on duty at the Iowa Veterans Home. The argument was overheard by other individuals. Mr. Ackley had received a verbal warning for a similar incident on July 2, 2008. The warning included a statement that further disciplinary action could lead to his termination.

Mr. Ackley received a copy of company policies, which prohibit such verbal outbursts.

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

The question is whether the evidence in this record establishes that the claimant 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. All of the employer's evidence was hearsay. None of the people who observed the final incident were called to testify. Nevertheless, while Mr. Ackley minimized his behavior in the final incident, he acknowledged the argument with the coworker and indicated that at least one other person could have heard it. While he disputed that the prior warning was for similar behavior, the administrative law judge disagrees. The evidence persuades the administrative law judge that the claimant was discharged for misconduct. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated May 13, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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