

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAL G WAL
Claimant

APPEAL NO. 12A-UI-04431-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ABM LTD
SERVICEMASTER GREEN**
Employer

**OC: 03/11/12
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Servicemaster, filed an appeal from a decision dated April 12, 2012, reference 03. The decision allowed benefits to the claimant, Wal Wal. After due notice was issued, a hearing was held by telephone conference call on May 10, 2012.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 11:01 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 11:13 a.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Human Resources Manager Greg Stearns, Area Manager Coco Lopez, and Area Supervisor Sergio Rodriguez.

ISSUE:

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

FINDINGS OF FACT:

Wal Wal was employed by Servicemaster from February 24, 2011 until February 28, 2012 as a part-time cleaner. He received warnings from the employer on July 1, July 18, and September 4, 2011. The warnings were for failure to be in uniform while on duty, not working his scheduled hours, and being no-call/no-show to work. He was advised his job was in jeopardy.

In mid-February 2012, the employer received complaints from a customer where Mr. Wal was assigned. It was an auto showroom and the floors were not being cleaned and mopped properly. The customer had to have the floors very clean and it was not being done. Ms. Lopez and Mr. Rodriguez went to the customer's building to inspect the claimant's work and found the

complaints to be correct. He was verbally warned several times he had to do the floors as required, but he failed to do so. The final complaint was on February 28, 2012; and when the supervisors arrived, they found the claimant had failed once more to clean the floors. He was discharged at that time.

Wal Wal has received unemployment benefits since filing a claim with an effective date of March 11, 2012.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of his failure to do his work as required. Mopping the floor in the showroom was of great importance to this customer; and when it was not done properly, it gave a poor impression of the business. Such a task is not a matter of lack of ability on the part of Mr. Wal, but a refusal to do the job as required. The contract with the customer was in jeopardy as a result of this poor workmanship.

The claimant's refusal to do his work as required is a deliberate and willful violation of his responsibilities to the employer and jeopardized ServiceMaster's business. This is conduct not in the best interests of the employer and the claimant is disqualified,

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of April 12, 2012, reference 03, is reversed. Wal Wal is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw