

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R JAEGER
Claimant

APPEAL NO. 07A-UI-08111-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BUILDING MAINTENANCE LLC
Employer

OC: 07/08/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 14, 2007, reference 05, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 10, 2007. Mr. Jaeger participated personally. The employer participated by Polly Hupseld.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from February 8, 2007 until June 13, 2007 when he was discharged from employment due to lack of ability. Mr. Jaeger was assigned to work as an evening lead custodian and was paid by the hour. The claimant was discharged when the employer believed the claimant did not possess the abilities or skills to function in a supervisory capacity. The claimant attempted to the best of his ability to perform his duties and to supervise other employees but was unable to do so at the level of competence expected by the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged due to lack of ability and not due to willful intentional disqualifying misconduct. The evidence in the record establishes that the claimant attempted to perform his duties to the best of his abilities but was unable to perform at the level of competence that the employer desired, therefore, the employer made a management decision to terminate Mr. Jaeger from their employ.

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.

For reasons stated herein the administrative law judge finds that the claimant was not separated due to intentional disqualifying misconduct but due to lack of ability under nondisqualifying conditions. Benefits are allowed providing claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 14, 2007, reference 05, is hereby affirmed. The claimant was dismissed under nondisqualifying decisions and is eligible to receive unemployment benefits, providing that he meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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