

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NGOR M KUANJ**  
Claimant

**APPEAL NO. 11A-UI-07384-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 05/08/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Burden of Proof

**STATEMENT OF THE CASE:**

Ngor M. Kuanj filed a timely appeal from an unemployment insurance decision dated June 1, 2011, reference 01, that disqualified him for benefits. Due notice was issued for a telephone hearing to be held August 4, 2011. Both Mr. Kuanj and his former employer, Packers Sanitation Services, Inc., provided phone numbers for the hearing. Both numbers were answered by recordings at the time of the hearing. The administrative law judge left instructions for the parties to contact him if they wished to participate. A half hour after the scheduled time of the hearing, neither party had responded. This decision is based on information from the fact-finding interview.

**ISSUE:**

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

**FINDINGS OF FACT:**

Ngor M. Kuanj was employed as a machine washer by Packers Sanitation Services, Inc. from November 15, 2010 until he was discharged May 6, 2011. Mr. Kuanj inadvertently failed to follow lock-out/tag-out procedures when cleaning a piece of equipment on May 6, 2011. He was distracted by other duties. The employer did not participate in fact finding.

**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 not.

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 of proof. See Iowa Code § 96.6-2. As noted above, the employer failed to participate in fact finding or in the contested case hearing. The claimant's fact-finding statement does not establish either willful misconduct or repeated acts of carelessness or negligence. No disqualification may be imposed based upon the evidence in this record.

**DECISION:**

The unemployment insurance decision dated June 1, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, 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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