

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L SCHOONOVER
Claimant

APPEAL NO: 13A-UI-03640-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUPERIOR CLEANING SERVICES LTD
Employer

OC: 01/27/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 18, 2013, reference 05, that held he was discharged for misconduct on January 23, 2013, and benefits are denied. A telephone hearing was held on April 29, 2013. The claimant did not participate. Doug Cue, Owner, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on January 14, 2013, and last worked for the employer as a full-time sweeper/scrubber driver on January 23. Claimant had worked for a prior company at the same John Deere facility.

The employer assigned claimant to work the same type of machine at the same location where he had been working. Supervisors confronted claimant when he was observed not engaging the machine brushes to clean the floor. It appeared claimant was deliberately not doing his assigned job when no one was there to observe him but would lower the brushes when a supervisor was present.

On January 23, when claimant continued to not engage the machine brushes he was terminated by the employer for repeated failure to follow work instructions.

Claimant failed to respond to the hearing notice.

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 administrative law judge concludes employer established claimant was discharged for misconduct in connection with employment on January 23, 2013.

A repeated failure to follow work instructions is job disqualifying misconduct.

DECISION:

The department decision dated March 18, 2013, reference 05, is affirmed. The claimant was discharged for misconduct on January 23, 2013. Benefits are denied until claimant re-qualifies by working in and being paid wages for insured work of at least ten-times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css