IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-04958-S2T
OC: 04/09/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ardon Williams (claimant) appealed a representative's May 5, 2006 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Exel (employer) for engaging in horseplay while on duty. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2006. The claimant was represented by Richard Schmidt, Attorney at Law, and participated personally. The employer was represented by Susan Chmelovsky, Hearings Consultant, and participated by Matt Andrews, General Manager; Brian Smith, Operations Manager; Jeff Grismore, First Shift Supervisor; Bryan Langille, Forklift Operator; and Karol Boyd, Regional Human Resources Manager. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 20, 1997, as a full-time janitor. The employer's policies are posted in the break room and by the time clock. The employer's policies prohibit conduct which endangers others by recklessness or horseplay. The claimant was tested regarding his knowledge of the employer's polices regarding horseplay on June 15, 2004. The claimant did not care for the work ethic of Jay Kent and complained about him to the employer. The employer was unable to find any wrongdoing on the part of Mr. Kent.

On April 8, 2006, the claimant was working overtime in the office area. Mr. Kent was not working that day. Bryan Langille caught the claimant lifting the lid of Mr. Kent's coffee mug, squirting Windex into the cup and leaving the mug on the desk. The claimant acted surprised when he saw Mr. Langille. Mr. Langille and a co-worker watched as the claimant laughed and left the area with the Windex in his hand.

Mr. Langille did not want to report the claimant to the employer, but felt he had no choice. The employer collected the mug and found it to contain a few teaspoons of coffee and smelled of ammonia. On Monday, April 10, 2006, the employer questioned workers and the claimant. The claimant admitted to picking up the cup, looking inside and replacing the lid. He admitted to carrying Windex. He did not admit to squirting Windex into the cup. In his written statement to the employer, he mentioned that Mr. Kent may have put Windex in his own cup. The employer sent the claimant home. On April 11, 2006, the employer terminated the claimant.

At the appeal hearing, the claimant admitted to pretending to squirt Windex into the cup. The claimant alleged that Mr. Langille may have squirted Windex into the mug so that Mr. Langille could have the claimant's job when the claimant was terminated.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony is illogical.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has an interest in protecting the well being of all of its employees. The recklessness by the claimant was in violation of specific work rules and against commonly-known, acceptable standards of work behavior. This constitutes disqualifying misconduct contrary to the best interests of employer and the safety of its employees. Benefits are denied.

DECISION:

The representative's May 5, 2006 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

bas/kjw