IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RICK COWDEN
Claimant

CLARKE COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO: 07A-UI-01062-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/31/06 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rick Cowden (claimant) appealed an unemployment insurance decision dated January 23, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Clarke Community School District (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2007. The claimant participated in the hearing. The employer participated through Superintendent Ned Cox; Dan Thomas, Elementary Principal; Willie Smith, Head Custodian. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 employed as a full-time custodian from October 11, 2005 through January 5, 2007 when he was discharged for repeatedly not following the employer's directives. He was counseled or received verbal warnings on at least 20 occasions before he was discharged. The claimant was verbally warned on May 17, 2006 for failing to install the bathroom panel correctly in the fifth and sixth grad hall and for not doing it in a timely manner. He was directed to look for more assignments but took no action and then refused to answer his walkie-talkie. The claimant was later found in the custodial office sitting at the desk with his feet up on it and he was drawing time and a half. He was told to empty the trash and he disappeared. He was asked via the walkie-talkie to clean up some graffiti but failed to respond. He was asked to help in the cafeteria; he came in, used the restroom and left again, without helping.

On June 19, 2006, he was issued a verbal warning for refusing to work with the group. The claimant walked off and would start a room by himself, as opposed to following his supervisor's directives. He was later found asleep by a co-worker in room 5D. He told the supervisor that he

came in early and his supervisor said they were all supposed to start at the same time and end at the same time. During that same week he was told not to leave an area until that work was done but he left anyway. The claimant received his regular evaluation on June 27, 2006 which concluded he does not want to work as a team, wanders off, does not follow other's lead, does not take criticism, and his attitude and quality of work is poor. The evaluation also noted the claimant has no initiative; his judgment is poor and needs improvement.

A verbal warning was issued on September 6, 2006 as a result of teachers' complaints that he had not vacuumed their rooms during the week. When questioned, he had no response. He was scheduled to get off work at 2:30 p.m. but had been sitting in his car since 2:00 p.m. On October 3, 2006, a teacher associate reported a mess in the bathroom and even after being told about it, the mess was still there several days later. The claimant said it was not the kids but the afternoon adult education class. The employer said it was not the adult class but that it did not make any difference. The claimant asked if he could leave early that night and was told no but was later found watching television at 10:15 p.m. when breaks are scheduled at 5:00 p.m., 7:00 p.m. and 9:00 p.m.

He received a verbal warning on October 9, 2006 for failing to clean the third and fourth grade bathrooms and had to be told to do it over. He frequently forgot his keys at home and one time lost his keys so that the employer had to have new keys made to the outside building lock. Near this time, the claimant asked if he could only perform half his job on one night and the other half on the next night but was advised he needed to get his job done each night. The employer had never had any other employees who were unable to complete their job duties. On October 10, 2006, the claimant asked to leave to go to the local casino saying that he only needed a half hour. He took longer than that but claimed he was back at the school working when he was still out of the school. On October 24, 2006, he refused to answer his walkie-talkie again but claimed it was because he was running the vacuum. His vacuum was not working on that date. On October 25, 2006, the claimant was observed taking soda cans out of the lounge and he redeemed them for a nickel a piece. Classroom doors were left unlocked that night and in fact, only five of the classrooms were locked. On October 26, 2006, he was scheduled to work at 3:30 p.m. but called in sick. He was seen with a friend at McDonald's at 5:00 p.m. and was seen at a local community function that evening.

Another formal evaluation was completed on October 30, 2006 and it addressed the previous issues. On November 15, 2006, the employer found a pink drop cord that the claimant was using and it had bare wires and duck tape on it. The employer had no pink drop cords; they only possess yellow cords and they should always be in good working order. The claimant used the pink drop cord and failed to report it to the employer. A student was ill on November 27, 2006 and the claimant was assigned to clean the floor, bathroom and hallway carpet. The following day it had still not been cleaned properly and vomit was later found on the wall. Additional complaints about failing to vacuum teachers' rooms were made on November 29, 2006. The claimant worked on December 3, 2006 but failed to log in or leave a note, which was common for him and no one else. There was another complaint made about the claimant not vacuuming the kindergarten teacher's room on December 7, 2006. The claimant called in sick on December 8, 2006 and his vacuum was found in his closet. It was broken with no vacuum bag and the filter was clogged. The employer waited until the following week for the claimant to report it but he failed to do so. His vacuum was plugged again on December 12, 2006 and it still had no bag. On December 18, 2006, the blue vacuum was missing and as the supervisor was looking for it, she realized that a classroom door was unlocked. It was dark but the supervisor went into the room and the claimant was in the room hiding in the dark behind the door. He had failed to previously answer his walkie-talkie. The employer had decided he would be discharged but was kind enough to wait until after the holidays. A meeting was held on

January 5, 2007 and when told he was discharged, the claimant stated it was fine, that he had another job already and was moving on.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.
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> 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for his repeated failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant had been repeatedly warned but his performance was not improving. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 23, 2007, reference 01, 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 been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs