

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARL R GILBERT**  
Claimant

**APPEAL NO. 14A-UI-08597-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL CLEAN OF IOWA INC**  
Employer

**OC: 07/20/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Karl Gilbert (claimant) appealed a representative's August 11, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with All Clean of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 8, 2014, in Des Moines, Iowa. The claimant participated personally. The employer participated by Emmett Schnathorst, President. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 October 8, 2013, as a full-time hood cleaner. The employer does not have a handbook. The employer issued the claimant about ten warnings. On November 20, 2013, and May 28, 2014, the employer issued the claimant a written warning for tardiness. The employer notified the claimant both times that further infractions could result in termination from employment.

On July 11, 2014, the claimant was scheduled to be at the shop at 6:30 p.m. He arrived at the correct time. The employer did not have a vehicle at the shop for the claimant and his partner to drive to the Polk County Jail (PCJ) to perform their work at 7:00 p.m. The claimant had to locate the vehicle. Once the vehicle was found, they had fuel and restock it. The claimant and his partner arrived at PCJ at 7:00 p.m. as required. When they arrived they found the employer had not listed their names on the roster. The claimant attempted to call the employer several times but the employer did not answer. The claimant and his co-worker sat in the waiting room at the PCJ for almost two hours before they could be approved to enter and perform their work. On July 23, 2014, PCJ complained about the situation and the employer lost its contract to work there. The employer terminated the claimant on July 24, 2014.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on July 11, 2014. The claimant was not discharged until July 24, 2014. In addition, the issues which caused the claimant to be late in performing his work were caused by the employer, not the claimant. The employer has

failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's August 11, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css