

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL PHILLIPS

Claimant

APPEAL NO: 11A-UI-13609-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH

Employer

OC: 09/25/11

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Paul Phillips (claimant) appealed an unemployment insurance decision dated October 12, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from ABM Janitorial Services North (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2011. The claimant participated in the hearing. The employer participated through Dee Hunter, Project Manager; Bethany Landas, Supervisor; and Denise Norman, Employer Representative. Employer's Exhibits One through Five were admitted into evidence. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 cleaner assigned to the Marshalltown Veterans Home from April 2, 2010 through September 26, 2011 when he was discharged for his third violation of the employer's work rules. Work Rule #9 addresses job assignments and responsibilities and requires employees to follow the work rules of the forepersons, supervisors and management. The rule states that insubordination, incompetence, or failure to perform duties as required will not be tolerated and will be cause for disciplinary action up to and including termination.

The claimant received a verbal warning on May 2, 2011 for violating Work Rule #9 when he failed an inspection. He received a 40 percent on the inspection and was advised he was required to maintain an 80 percent or higher on all inspections after he was retrained. A written warning was issued to him on August 22, 2011 for the same rule violation when he received a

65 percent on his inspection. He was again retrained but failed a third inspection on September 20, 2011 with a 78 percent rating.

The employer suspended him for three days without pay on September 21, 2011 pending a further investigation. The employer had four different individuals, two supervisors and two relief workers, complete the claimant's work assignments. All four were able to successfully complete the assigned tasks within a timely manner. Consequently, the claimant was discharged on September 26, 2011 for his third violation of the employer's Work Rule #9.

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 § 96.5-2-a.

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 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 on September 26, 2011 for his repeated failure to follow directives. A 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 was capable of performing the directives within the time allotted as evidenced by the fact that he frequently passed his inspections.

Furthermore, the employer had four other employees perform his tasks and they were able to complete these duties in a timely manner. Consequently, the claimant demonstrated an intentional and substantial disregard of the employer's interests and of his duties and obligations to the employer. His repeated refusal to follow directives shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. 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 October 12, 2011, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs