

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L DEROCHIE**  
Claimant

**APPEAL NO: 11A-UI-04747-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREEN LIGHT TRUCK WASH  
AND SERVICE INC**  
Employer

**OC: 03/13/11**  
**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 April 4, 2011, reference 01, that held he was discharged for misconduct on March 14, 2011, and benefits are denied. A hearing was held in Sioux City, Iowa on May 24, 2011. The claimant did not participate. Sherry Neiberger, Co-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 testimony of the witnesses, and having considered the evidence in the record, finds: The claimant most recently worked for the employer about one year leading up to March 14, 2011. He worked full-time washing trucks. On March 14, 2011, a client requested a truck wash and to have the sawdust swept from his trailer. The first shift manger denied the client request to have an employee remove the sawdust, but instructed the claimant to give the client a broom to perform the work.

A short time later, the shift manager observed claimant sweeping the sawdust from the client's trailer in defiance of his instruction. The shift manager had information the claimant agreed to do the extra for cash on the side. The shift manager terminated claimant for disobeying his work instruction. The claimant failed to appear for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on March 14, 2011, for insubordination.

The claimant knew he was instructed not to sweep the client's trailer, but he disobeyed the instruction with the belief he was taking cash on the side to do so that constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated April 4, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on March 14, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs