

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE DEAN
Claimant

APPEAL NO: 07A-UI-01322-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST JANITORIAL SERVICE INC
Employer

**OC: 01-07-07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 31, 2007, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 20, 2007. The claimant participated in the hearing. Jerry Driscoll, Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time janitor for Midwest Janitorial Service from March 23, 2005 to January 3, 2007. On January 2, 2007, an attorney for the client reported seeing the claimant reading papers on another attorney's desk for the second time in a couple days and the client asked that the claimant be removed immediately. The employer discussed the situation with the claimant and he denied reading anything on anyone's desk. The claimant testified he cleaned the desks but did not go through any of the paperwork on either desk. The claimant was warned November 14, 2006, and placed on a 60 day probation while assigned to Elmcrest Country Club for leaving early and failing to complete his assigned tasks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer maintains that the claimant was reading papers on two attorneys' desks, the claimant credibly denied doing so and had no apparent reason to be reading the paperwork. Although an attorney in the office reported seeing the claimant going through papers on two attorneys' desks, it is not unreasonable to believe that the claimant was simply doing his job and cleaning the desks rather than snooping through the paperwork. The claimant was on probation when these allegations occurred; however there is not enough evidence to conclude he was going through paperwork on the desks and not simply cleaning as he was expected to do. Consequently, the administrative law judge concludes the claimant's actions do not constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 31, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs