

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RANDY GOODEN**

Claimant

**UNITED METHODIST CHURCH**

Employer

**APPEAL 15A-UI-06685-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/15**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 8, 2015, (reference 01) unemployment insurance decision that granted benefits based upon the determination the claimant was not discharged for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 9, 2015. Claimant Randy Gooden participated on his own behalf. Employer United Methodist Church participated through Reverend Leila Disburg.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a custodian beginning April 23, 2014, and was separated from employment on May 17, 2015. The claimant was released from his employment because he was not adequately performing his job duties. The claimant was not cleaning and finishing projects to the standard the employer expected.

The final incident occurred toward the end of April 2015. Reverend Disburg found the stairwell was dirty, the basement was not cleaned, a bathroom floor was dirty, and a door was left unlocked. The claimant regularly did most of these chores; however, he did not finish the basement project as it was more difficult to dispose of the light bulbs in the basement than he had expected. Reverend Disburg reported these issues to the hiring committee and trustees. She also discussed the issues with the claimant. The claimant was then terminated on May 17, 2015 for not performing work to the employer's satisfaction.

Reverend Disburg spoke the claimant almost weekly about his performance issues. She would give him positive feedback and then describe the negative aspects of his performance. On March 23, 2015, the claimant met with members of the hiring committee who asked him if there was anything additional he needed to adequately perform his job. The claimant also met with the trustee who started in February 2015. He told the claimant that he was doing a good job

and asked if there was anything additional needed to perform his job duties. No one ever told the claimant if his job performance did not improve that he would be terminated.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Since the employer agreed that claimant had never had a sustained period of time during which he performed his job duties to employer's satisfaction and inasmuch as he did attempt to perform the job to the best of his ability but was unable to meet its expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

The employment relationship between the employer and the claimant is exempt from the Iowa Employment Security Act. Iowa Admin. Code r. 871-23.27(96)(1). The employer is a church and the claimant was a custodian performing services directly for the church. While the claimant is eligible to receive benefits from any of the covered employers in his base period, the employer in this case is not a covered employer and will not be charged for any of the unemployment benefits received by the claimant.

**DECISION:**

The June 8, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The employer is relieved from any charges related to the claimant's benefits.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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