

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM J HARRIS
Claimant

APPEAL NO. 08A-UI-09378-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KAL SERVICES INC
MIDWEST SANITATION**
Employer

**OC: 09/21/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Adam Harris (claimant) appealed a representative's October 14, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Midwest Sanitation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2008. The claimant was represented by Eric Palmer, Attorney at Law, and participated personally. The employer participated by Lyle Van Der Meiden, Co-owner/President. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 April 18, 2005, as a part-time recycling center laborer. The employer issued the claimant no warnings prior to his separation. Employees often took their 15-minute break at the end of the shift.

On September 20, 2008, the claimant felt ill. He was supposed to work from 7:30 a.m. to 11:30 p.m. He worked without break until 11:15 a.m. The claimant told a co-worker that he was taking his break at the end of the day and leaving because he felt ill. The claimant did not tell a supervisor this because no supervisor was available. The claimant marked his timecard as working from 7:30 to 11:30 a.m. That time included his 15 minute break at the end of his shift.

On Monday, September 22, 2008, the claimant properly reported to the employer that he would be absent due to illness. He saw a physician who excused him from work from September 20 through 22, 2008. On September 23, 2008, the claimant returned to work and provided the employer with a copy of the doctor's note. The employer terminated the claimant for falsifying his timecard on September 20, 2008.

REASONING AND CONCLUSIONS OF LAW:

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

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct at the hearing. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 14, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css