

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R SANFORD
Claimant

APPEAL NO. 07A-UI-05123-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMCO CORPORATION
Employer

**OC: 04/22/07 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

William Sanford filed an appeal from a representative's decision dated May 10, 2007, reference 01, which denied benefits based on his separation from Kimco Corporation. After due notice was issued, a hearing was held on July 17, 2007 in Burlington, Iowa. The employer participated by Charlotte Mowrer, Site Supervisor. Exhibits One through Five were admitted on the employer's behalf. Mr. Sanford did not appear for the hearing.

ISSUE:

At issue in this matter is whether Mr. Sanford was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sanford was employed by Kimco Corporation from September 14, 2006 until April 17, 2007 as a full-time janitor. He was discharged for failing to perform his duties.

Mr. Sanford received a written warning on March 26, 2007 because he had not been performing assigned duties. He had been reminded to perform certain tasks but had not completed them when the employer checked later. He was not emptying the mop buckets on a daily basis. He was using the same water to mop floors on consecutive days. The warning also addressed the fact that he had not vacuumed offices on the third floor after being reminded to do so. He had not done the required dusting and vacuuming in offices on the second floor. Mr. Sanford signed the written warning. Between March 9 and April 17, Mr. Sanford received verbal warnings about the quality of his work and his failure to perform all duties. He was told to remove the plastic liners with the trash from waste baskets. Instead, he was emptying the waste baskets but leaving the liners. Sometimes there was still trash in the liners after they were emptied. He was still not emptying the mop bucket on a daily basis as instructed.

The decision to discharge Mr. Sanford was prompted by a complaint received on April 17. The complaint indicated that waste baskets had not been emptied and vacuuming had not been

done. As a result, Mr. Sanford was discharged on April 18. He was the only individual assigned to perform the work that was not done.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Sanford was discharged for not performing his assigned duties. He knew what the employer's expectations were and had been warned about his performance. In spite of warnings, he did not always empty the mop bucket on a daily basis. As a result, he was cleaning with dirty water rather than clean as expected.

Mr. Sanford also knew the employer expected him to discard the plastic liner along with the trash. Instead, he simply emptied the waste but left the liner. He did not take care to remove trash remaining in the liner. He was not performing the vacuuming as required. His performance resulted in customer complaints and had the potential of jeopardizing the employer's business relationship with the customer. Mr. Sanford did not participate in the hearing to offer an explanation as to why he was not performing his duties. Inasmuch as he had been warned about his performance, the administrative law judge concludes that his failure to perform assigned duties constituted a substantial disregard of the employer's standards and interests. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 10, 2007, reference 01, is hereby affirmed. Mr. Sanford was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css