

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE R HOUCK
Claimant

APPEAL NO. 10A-UI-07560-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICLEAN OF IOWA INC
Employer

**Original Claim: 06/21/09
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Americlean, filed an appeal from a decision dated May 14, 2010, reference 02. The decision allowed benefits to the claimant, Shane Houck. After due notice was issued, a hearing was held by telephone conference call on July 13, 2010. The claimant participated on his own behalf. The employer participated by Owner Christine Wehmeyer. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Shane Houck was employed by Americlean from December 7, 2009 until February 25, 2010 as a full-time cleaner. At the time he was interviewed and offered the job, the claimant was told an important part of his duties would be interacting with customers, being courteous and informative.

The training period for most employees is less than a month, but Mr. Houck was taking longer than usual. He was given a written warning on January 27, 2010, about unexcused absenteeism. His supervisors reported he had a "bad attitude" and would not follow instructions on how to do the assigned jobs under the company protocols. Also, his interaction with customers was substandard. Owner Christine Wehmeyer met with him on February 12, 2010, to discuss these issues with him. He acknowledged he did not like interacting with customers because it was "not [his] thing." The employer told him it was a critical part of his job, because he was the only person the customer would deal with face-to-face and the impression he gave would determine if the customer wanted to do further business with Americlean.

The employer agreed to give him another week to improve his performance and attitude. From February 12 through 25, 2010, he worked carpet and duct cleaning jobs. The supervisor reported he was still not interacting with customers and would not follow the required cleaning protocols. Some of the jobs had to be done over. Supervisor Jamie Turpin reported to Ms. Wehmeyer that if Mr. Houck continued with the company, most of his jobs would have to be redone because of his refusal to follow instructions. On February 25, 2010, Ms. Wehmeyer notified him he was discharged.

Shane Houck has received unemployment benefits since filing an additional claim with an effective date of April 25, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of his poor work performance and refusal to follow directions. Mr. Houck maintained he was following all instructions as required and that it had never been discussed with him about his poor communication with customers. This is not correct, as he signed a warning in which these issues were discussed with him. He maintained the employer was "making up" the fact these things had been discussed with him even though they are clearly stated in the warnings. The administrative law judge cannot therefore give much weight to his denials.

The record establishes the claimant refused to follow reasonable instructions from his supervisor about how the work was to be performed and did not appropriately communicate with the customers as required. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the

benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 14, 2010, reference 02, is reversed. Shane Houck is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw