

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIE M JACKSON
Claimant

APPEAL NO. 12A-UI-00112-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANN BERGMAN & JAMES BERGMAN
Employer

**OC: 11/27/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 28, 2011, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 8, 2012, in Davenport, Iowa. The claimant participated. The claimant was represented by Liz Smith, law student intern, and John Graupman, who is affiliated with HELP legal assistance. The employer participated by Andrew Berlingeri, district manager/Pioneer Property Management. The record consists of the testimony of Willie Jackson; the testimony of Andrew Berlingeri; Claimant's Exhibits A through D; and Employer's Exhibits 1 through 5.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant's employer is Thomas Place, which is a senior housing community located in Bettendorf, Iowa. The claimant was hired on January 3, 2011, as a part-time housekeeper. She was responsible for cleaning the common areas, which included two bathrooms. She also cleaned apartments after the apartments were vacated.

On or about November 29, 2011, the claimant was asked to clean an apartment that had belonged to an individual who had died from cancer. The claimant refused to clean the apartment. On November 30, 2011, she again refused to clean the apartment. When asked why she would not clean the apartment, she said that it was a biohazard. She was asked what she meant by that and she did not give any specifics other than blood and feces. Andrew Berlingeri went into the apartment. There was no blood anywhere. There was a small amount of fecal material on the underside of the toilet lid. (Exhibit 1) The claimant regularly cleaned the bathrooms in the common area.

On December 2, 2011, Mr. Berlingeri asked the claimant to come up to the apartment and show him the blood and feces. The claimant was eating cake and ice cream and refused to go into the apartment. He asked her what she needed to clean the apartment and she would not answer. She refused to clean the apartment. She thought the tenant had died from a blood disease and she was looking out for her health. The claimant was terminated on December 2, 2011.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Failure to perform a specific task does not constitute misconduct

if the failure is in good faith or for good cause. See Woods v. IDJS, 327 N.W.2d 768 (Iowa App. 1982). The employer has the burden of proof to establish misconduct.

The evidence showed that the claimant unequivocally refused to clean an apartment when asked to do so by her employer. This refusal was made multiple times. The claimant said that there was a 2 foot by 4 foot pool of dried blood in the bathroom and there was feces equivalent to one bowel movement. The claimant was under the impression that the tenant who had lived in this apartment had died from a blood disease. The claimant came to the conclusion that she might get this blood disease if she cleaned the apartment.

The claimant's testimony is not credible and is rejected. Mr. Berlingeri testified that he went into the apartment and could not find any blood anywhere. The claimant estimated the blood pool to be 2 foot by 4 foot, which is highly unlikely, since the bathroom is only 4 foot by 8 foot. The picture of the stool shows a small amount of fecal matter. The claimant refused to go into the apartment so that she could show Mr. Berlingeri where the blood and fecal matter was. She did not ask for any cleaning supplies that would have made her feel she could clean the apartment.

The most reasonable inference from the evidence is that the claimant was afraid she would get the same blood disease that she thought the tenant had died from. This belief may be sincerely held by the claimant, but it is not rational. Even assuming that the tenant died from a blood cancer, such as leukemia, this does not mean that the claimant would get leukemia if she cleaned the blood up. Again, there is no credible evidence that there was blood on the floor.

The administrative law judge concludes that the claimant repeatedly refused to do a job that was well within her job description. She did not have a reasonable excuse for failing to clean the bathroom. This is misconduct. Benefits are denied.

DECISION:

The representative's decision dated December 28, 2011, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw