

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEITH C BOLDT**  
Claimant

**SERVICEMASTER OF FORT MADISON  
MOWEN CLEANING SERVICE LLC**  
Employer

**APPEAL NO. 14A-UI-11864-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/05/14  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated November 14, 2014 (reference 02) which denied unemployment insurance benefits; finding that the claimant was discharged from work under disqualifying conditions. After due notice was provided, a telephone hearing was held on December 22, 2014. Claimant participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Keith Boldt was employed by Mowen Cleaning Service, LLC from approximately April 10, 2014 until October 9, 2014 when he was discharged from employment. Mr. Boldt was employed as a part-time cleaning technician and was paid \$8 per hour. The claimant's immediate supervisor was Diana (last name unknown).

Mr. Boldt was discharged on October 9, 2014 when the employer was dissatisfied with Mr. Boldt's cleaning work. Mr. Boldt was most recently assigned to work at a Union Pacific facility and at an office trailer located near the penitentiary.

Mr. Boldt testified that he was unable to perform his cleaning duties to the employer's satisfaction because the scrubber and buffer, provided to him by the company, were malfunctioning and would not properly scrub or buff; and that although he informed the employer of the equipment issues, they continued. Mr. Boldt further testified that the employer was dissatisfied due to a "stain" in the floor at the UP facility. The stain was permanent and could not be removed by Mr. Boldt's cleaning.

It is the claimant's position that he was unexpectedly terminated on October 9, 2014 although he was working to the best of his abilities. It is also the claimant's belief that he was not adequately warned prior to being discharged from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to collaborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the claimant appeared personally and provided sworn testimony denying working below his capabilities. Mr. Boldt testified that his cleaning work was hampered by faulty equipment and that although the employer was informed of the equipment issues, the issues with faulty equipment continued. It is the claimant's further position that the employer's expectations were unreasonable, as many of the conditions were beyond the claimant's control; such as permanent stains in the floor surface and the tendency of railroad workers to quickly soil areas, although the claimant only had the opportunity to clean the areas three times per week.

Based upon the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional job disqualifying misconduct on the part of the claimant or negligence or carelessness to such a degree so as to manifest equal culpability under the provisions of the Employment Security Law.

While the decision to terminate Mr. Boldt may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 14, 2014 (reference 02) is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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