

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JONATHAN GONZALEZ**  
Claimant

**NATURAL IMPRESSION LANDSCAPING LL**  
Employer

**APPEAL 19A-UI-08849-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/06/19  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 8, 2019 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on December 4, 2019. The claimant, Jonathan Gonzalez, participated personally and was represented by Attorney Joshua Clapp. The employer, Natural Impression Landscaping LLC, participated through witness Jeff Mueggenberg. Claimant's Exhibits 1 through 5 were admitted. Following the hearing, the employer submitted a written request to reopen the record for inclusion of exhibits. The employer's request to reopen the record was denied.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a landscape construction foreman. His job duties included ensuring landscape jobs were completed correctly for residential customers. He began working for the employer on April 1, 2019 and his employment ended on September 18, 2019. Jeff Mueggenberg was claimant's immediate supervisor. Claimant was paid by the hour. It takes claimant no more than 15-20 minutes to clean out his truck at the end of a day.

Claimant was required to accurately record the time he worked and submit the timecard to Mr. Mueggenberg or a supervisor named Miguel. Claimant rode back to the shop with another employee named Clayton at the end of his shift. For the week of September 1, 2019 through September 7, 2019, claimant submitted timecards that did not reflect the actual time he worked. This came to Mr. Mueggenberg's attention when he compared the claimant's timecard with Clayton's timecard for the week.

On Tuesday, September 3, 2019, claimant reported that he worked until 5:00 p.m. when he actually only worked until 4:00 p.m. On September 5, 2019, claimant reported that he worked

until 5:00 p.m. when he actually only worked until 4:00 p.m. On September 6, 2019, claimant reported that he worked until 5:00 p.m. when he actually only worked until 4:30 p.m. Claimant was discharged for falsification of his timecard.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(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.

The decision in this case rests upon the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The administrative law judge has carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above. The administrative law judge finds that Mr. Mueggenberg's testimony is more credible than the claimant's testimony.

The administrative law judge has carefully reviewed Claimant's Exhibits 1 through 5. Exhibit 5 includes text messages from September 6, 2019 wherein claimant reported that he did not leave work until 5:00 p.m. The text message indicates that the claimant was almost to the shop at 4:29 p.m. Claimant further testified that it takes him no longer than 15-20 minutes to clean the truck at the end of the day. It is unlikely that claimant left work at 5:00 p.m. given the fact that he texted his wife that he was almost to the shop at 4:29 p.m. Further, the other text messages that the claimant submitted which purported to be for September 2, 3, and 4, 2019 did not have any dates listed. Claimant had access to supply the dates for these text messages but chose not to do so. As such, they are not given any weight that they are text messages from the date and times that the claimant purported them to be from.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or

negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

This was not an incident of carelessness or poor work performance. Claimant intentionally falsified his timecard records to reflect that he worked more hours than he did, to the detriment of the employer. Claimant's actions were a substantial violation of the employer's interests. Accordingly, benefits are denied.

**DECISION:**

The November 8, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn