

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON T GILBRAITH
Claimant

APPEAL NO: 13A-UI-10934-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRONTIER MGMT CORP
Employer

OC: 08/18/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 16, 2013 determination (reference 01) that held him qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Kelly Kerkhoven, the manager, Toby Brown, the maintenance supervisor, and Ashley Gaskill appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2012. He worked as a full-time maintenance employee. Brown supervised him.

During his employment, the claimant had problems following directions and getting extra job duties completed. The employer gave the claimant a written warning in November 2012 and a second written warning on March 25, 2013. In March the employer also suspended the claimant three days for again failing to complete assigned extra tasks. Even after the employer put the extra tasks in writing, as the claimant requested, the claimant was still unable to complete extra job duties and he failed to inform the employer when he did not complete certain tasks. The warning told the claimant that the next time he did not complete assigned jobs and did not let the employer know the extra jobs had not been completed that he would be discharged for insubordination. After receiving the March 25 warning, the claimant understood his job was in jeopardy.

On July 23, the employer gave the claimant a list of extra job duties, landscaping tasks, to complete. On July 23, the claimant completed a few of the extra jobs. He did not leave the employer a message that he had not completed some jobs or why he had not completed all the

extra duties. On July 24, the employer talked to the claimant about the uncompleted job duties and drew a map so the claimant knew exactly where the unfinished jobs were at.

On July 24, the claimant talked to Brown when the power cord on the trimmer he used was not long enough to trim some bushes. While Brown expected the claimant to use the hand trimmer to complete the trimming job, the claimant understood that Brown would figure out how to get power to that area and the claimant could finish up trimming these bushes later.

The other job that the claimant did not complete to the employer's satisfaction was picking up tree trimmings. When Kerkhoven came to work after July 24, she noticed tree trimmings were still on the property. Kerkhoven and Brown concluded the claimant had not picked up any tree trimmings on July 24. On July 24, the claimant picked up tree trimmings to the best of his ability. He did not have a leaf blower and acknowledged he did not get all the tree trimmings out of the rocks.

After the claimant finished work on July 24, he was not scheduled to work again until July 29, 2013. The employer discharged the claimant on July 29 after concluding the claimant was insubordinate when he failed to complete the assigned jobs on July 24, 2013.

The claimant established a claim for benefits during the week of August 18, 2013. He has filed weekly claims for the weeks ending August 24 through October 5, 2013. He received his maximum weekly benefit amount of \$174 for each of these weeks. The employer forwarded the claimant's personnel file to a claims specialist for the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence shows the employer has had problems with the claimant successfully completing extra assigned job duties throughout his employment. Brown acknowledged that he and the claimant had communication issues. As a result of miscommunications issues, the employer started writing down extra jobs the claimant was to do. After the claimant received the March 25 written warning, he understood his job was jeopardy and there were no significant problems until July 24.

During his shift on July 23, the claimant completed some but not all of the extra jobs the employer asked him to complete. On July 24 the employer reminded him that if he was unable to get a job completed he needed to communicate this to the employer. On July 24 the employer also reminded the claimant that if he did not complete the extra jobs and did not let the employer know why a job was not completed as instructed, he could be discharged for insubordination. The employer drew a map of the property so the claimant knew exactly where he needed to do the assigned landscape work.

On July 24, the claimant trimmed bushes, but did not get all bushes trimmed because the power trimmer he used did not reach some bushes. The employer acknowledged the claimant talked to Brown about this. After talking to Brown the claimant did not understand he was to use a hand trimmer, instead he understood Brown was going to look into this matter and the claimant could finish trimming the remaining bushes later. Even though the claimant picked up tree and bush trimmings on July 24, he did not do this job to the employer's satisfaction. After talking to Brown about the power trimmer and picking up tree trimmings to the best of his ability, the claimant did not leave the employer any messages that he did not complete the assigned tasks.

The employer established business reasons for discharging the claimant. The employer was not satisfied with the claimant's work performance. The evidence does not establish that the claimant was insubordinate. He followed the employer's instructions and did the work to the best of his ability. The claimant did not commit work-connected misconduct. Therefore, as of August 18, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's September 16, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 18, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs