

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KATHLEEN L THOMAS
135 PEAVEY LN
WAYZATA MN 55391

A+ LAWN & LANDSCAPING INC
6336 HICKMAN RD #203
DES MOINES IA 50322

Appeal Number: 06A-UI-03568-DWT
OC: 02/26/06 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

A+ Lawn & Landscaping, Inc. (employer) appealed a representative's March 16, 2006 decision (reference 01) that concluded Kathleen L. Thomas (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer discharged for the claimant for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2006. The claimant participated in the hearing. Shawn Edwards, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on January 16, 2006. The employer hired the claimant to work full time in the office. The employer is a small office and considers an employee to be excessively absent from work if the employer has more than five absences a year.

On January 25, the claimant became ill and left work at 9:30 a.m. The claimant gave the employer a doctor's excuse verifying she was ill and unable to work on January 25. On February 13, the claimant received a call from her stepmother. The claimant's stepmother was ill and asked the claimant to help her. The claimant talked to the office manager and received permission to leave work at 12:17 p.m. Initially, the claimant planned to come back to work by 3:00 p.m. After the claimant took her stepmother to the doctor, she learned her step mother had to be admitted to the hospital. The claimant contacted the office manager and informed her that she was unable to come back to work that day. On February 16, the claimant notified the employer she was ill and was unable to work. The claimant gave the employer a doctor's excuse the next day verifying she had been ill.

When the claimant returned to work on February 17, 2006, the claimant asked the office manager why she ignored the claimant and appeared to act rudely toward her. The office manager explained that she was concerned about the claimant's attendance and was frustrated with the claimant. The employer had discharged a previous employee for attendance problems.

On February 20, there was no mail. The claimant finished her work and asked if anyone else had any work to do. The claimant understood the office manager gave her permission to leave work early this day due to a lack of work. When the office manager asked Edwards if the claimant could leave work early that day, he told her no. The claimant did not know the employer did not grant her permission to leave work early on February 20.

The employer planned to have an after work training session with the claimant on February 22. The claimant was unable to stay late this day. The week of February 26, Edwards and the office manager decided that based on the claimant's attendance she was not a reliable or dependable employee and had to discharge her. The employer informed the claimant on February 28 her job was not working out and she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established compelling business reasons for discharging the claimant. The employer is a small business and relies heavily on employees to work as scheduled. The employer hired the claimant because of attendance problems with a former employee. Based on the claimant's attendance in the short time she worked, the employer had reasonable concerns as to whether the claimant was a dependable and reliable employee. Based on business reasons, the employer decided the claimant was not a good fit for the employer and discharged her.

The facts show that even though the employer had concerns about the claimant's dependability, the claimant did not intentionally fail to work as scheduled. The claimant was either sick or received permission from Edwards or the office manager to go home early on the days she did not work as scheduled. The one time the employer wanted the claimant to do after work training and the claimant was not available does not by itself amount to work-connected misconduct. The facts do not establish that the claimant committed work-connected misconduct. As of February 26, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's March 16, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

dlw/pjs