

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOE D LOTERBOUER
Claimant

A+ LAWN & LANDSCAPING INC
Employer

APPEAL 22A-UI-04362-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/02/22
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On February 10, 2022, Joe Loterbouer (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated February 3, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he was discharged on January 6, 2022 for theft of company property.

A telephone hearing was held on March 21, 2022. The parties were properly notified of the hearing. The claimant participated personally. A+ Lawn & Landscaping Inc (employer/respondent) did not appear or participate. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment disqualifying?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in July 2020. Claimant worked for employer as a full-time, seasonal foreman. Claimant's immediate supervisor was Cole. He also took direction from owners Sean and Mark. The last day claimant was present and performing work was January 6, 2022.

Claimant believed he was laid off beginning December 18, 2021. However, he was asked to return to work for a few hours on January 6, 2022 for what he was told were insurance reasons. Claimant did so and believed the layoff would continue after that time. Claimant never indicated he was resigning or did not intend to return to work following the layoff. Claimant did not learn until the fact-finding interview held on January 31, 2022 that employer had discharged him.

Employer did not discipline claimant or accuse him of theft. No criminal charges are pending. Claimant does not know how or why employer believes a theft occurred.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 3, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he was discharged on January 6, 2022 for theft of company property is REVERSED.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is on deliberate, intentional, or

culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

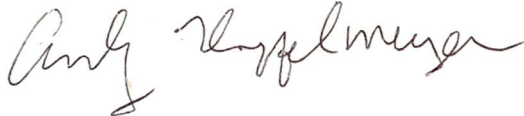
When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp’t Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions “liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Emp’t Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). “[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant.” *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). The evidence establishes the separation was a discharge rather than a voluntary leaving and there is no evidence establishing the separation was disqualifying. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

DECISION:

The decision dated February 3, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he was discharged on January 6, 2022 for theft of company property is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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March 25, 2022
Decision Dated and Mailed

abd/abd