

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY C SCRIBNER**  
Claimant

**APPEAL NO: 18A-UI-08256-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY LAUNDERING CO**  
Employer

**OC: 01/07/18**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

City Laundering Co, the employer filed a timely appeal from a representative's decision dated July 24, 2018, reference 04, which held claimant eligible to receive unemployment insurance benefits, finding that he was dismissed from work on June 28, 2018 under non-disqualifying conditions. After due notice was provided, a telephone hearing was held on August 23, 2018. Claimant participated. Employer participated by Ms. Nicole O'Brien, Human Resource Manager, and Mr. Ken Schnor, Director of Operations.

**ISSUE:**

The issue is whether the claimant was discharged for intentional job-related 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: Larry Scribner was employed by City Laundering Co. from March 12, 2018 until June 28, 2018, when he was discharged from employment. Mr. Scribner was employed as a full-time working district manager and was paid by salary. His immediate supervisor was the operations manager, Ken Schnor.

A decision was made to terminate Mr. Scribner when the employer determined that Mr. Scribner was not displaying the communication and interpersonal skills necessary for him to successfully fulfill the position of district manager.

In addition to the day-to-day route skills required, the employer expected that Mr. Scribner would treat and interact with all subordinates, other employees and customers in a manner conducive to good relations and customer satisfaction. Mr. Scribner was new on the job and was provided on-the-job training. Shortly thereafter, Mr. Scribner began to accompany the driver trainees on routes to assist, supervise, and train new drivers.

The employer was aware of some complaints about Mr. Scribner's demeanor and lack of communication skills. The claimant did not attend prescheduled weekly meetings because he was performing other duties for the company.

In an effort to address some of the company's concerns, Mr. Scribner was given an initial evaluation. Although Mr. Scribner scored well in many areas of the evaluation, the employer expected him to improve his communication skills and work more effectively with other company workers and trainees. The claimant was also encouraged to attend the weekly meetings pre-scheduled by the company. Claimant was given his copy of the performance review on June 18, 2018.

Mr. Scribner continued to perform his duties, often interacting on a one-to-one basis with driver trainees and clients. When Mr. Scribner attended one weekly meeting after receiving his evaluation, but received permission in advance not to attend two others because he was performing other work for the company.

A decision was made to terminate Mr. Scribner from his employment when the company received complaints from two driver trainees and elicited a further complaint from a third driver. Drivers had complained about his practice of direct and blunt communication and the demeanor the drivers allege Mr. Scribner used with them or customers at times. Mr. Schnor allowed Mr. Scribner to miss the weekly meetings, but he nonetheless felt the claimant should have arranged his priorities so he could attend the meetings and obtain additional training from Mr. Schnor. Based upon the reports of the driver trainees, the employer concluded that Mr. Scribner was not demonstrating the necessary skills the company desired for his job position in the ten days between the time he received his evaluation results and the company received complaints. Therefore, the decision was made to terminate Mr. Scribner's employment. Mr. Scribner had not received any warnings or counselings and did not know his job was in jeopardy.

#### **REASONING AND CONCLUSIONS OF LAW:**

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(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).

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). 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. 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 deemed misconduct within the meaning of the statute. See *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

A warning weighs heavily towards a finding of intentional misconduct. In this case, however, the claimant had received no warnings from the employer, but was encouraged to improve his performance in an evaluation he received only ten days before his discharge.

An employer may discharge an employee for any number of reasons, or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not adequately previously warned the claimant about any of the issues leading to the separation, it did not meet the burden of proof to establish the claimant acted deliberately, or negligently, in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

While the employer's decision to separate Mr. Scribner from employment may have been a sound decision from a management viewpoint, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated July 24, 2018, reference 04, is affirmed. Claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn