

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSH L BEEGLE
Claimant

APPEAL NO: 19A-UI-01760-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITAL LANDSCAPING LLC
Employer

**OC: 11/19/17
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 13, 2018, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 13, 2019. The claimant participated in the hearing. Phillip Glaser and Katharina Glaser, Co-Owners, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on September 13, 2018. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 23, 2018. That date fell on a Sunday so the appeal was actually due September 24, 2018. The appeal was not filed until February 27, 2019, which is after the date noticed on the disqualification decision. The reason the appeal was late is that the claimant never received the representative's decision denying him benefits and the Department continued to pay him benefits through the week ending February 16, 2019. Because the claimant did not receive the representative's decision, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time crew leader for Capital Landscaping from March 7, 2018 to July 24, 2018. He was discharged because of his attendance. On July 17 and 18, 2018, the claimant was a no-call/no-show. On July 19, 2018, he sent the employer a text message at 6:00 a.m. stating he ran out of gas. He had not arrived at work by 9:42 a.m. and the employer texted him that was the third day in a row he was absent. He continued, "Other than today this is the first time we've heard from you. Are you still employed?" At 9:44 a.m. the claimant replied, "I'm on the side of the road. I still work for y'all. Just ran out of gas." That was the last contact the employer had with the claimant that day. On July 20, 2018, the claimant

called the employer at 1:00 or 2:00 p.m. and said he was going to come into work but the employer told him the crew had completed the mowing for the week. On Monday, July 23, 2018, the claimant was a no-call/no-show. The claimant reported for work July 24, 2018, and the employer gave him his final check and stated he was terminated due to job abandonment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was a no-call/no-show July 17, 18 and 23, 2018. He was absent July 19, 2018, because he ran out of gas, which was his responsibility, and did not report to work when that situation was resolved. He did not call the employer or show up for work July 20, 2018, until he eventually called at 1:00 or 2:00 p.m. and said he was coming in but did not offer a reason for his absence that day and because it was so late the employer told him it had already completed the mowing duties for the week.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 13, 2018, reference 03, decision is affirmed. The claimant's appeal is timely and he was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn