

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSE A SAGE**  
Claimant

**RJ LAWN SERVICE INC**  
Employer

**APPEAL 24A-UI-09617-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/20/24  
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct

**STATEMENT OF THE CASE:**

On November 13, 2024, the claimant/appellant filed an appeal from the November 8, 2024, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on August 2, 2024 for violation of a known company rule. A hearing was scheduled for December 3, 2024. Due to exhibit issues the hearing was rescheduled. The parties were properly notified about the hearing. A telephone hearing was held on December 19, 2024. The claimant participated through attorney, Chris Stewart. The employer participated through Chief Operating Officer, Annette McCarthy. Employer's Exhibits 1, 3, 4, 5, 6, 7, and 9 were admitted into the record. Pages 1-3 of Exhibit 2 were admitted into the record. Employer's exhibit 8 and page 4 of exhibit 2 were not admitted into the record due to being prepared after the separation in preparation of the fact-finding interview and/or hearing.

**ISSUE:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for employer on April 17, 2023. The claimant last worked as a full-time account manager. The claimant is a salaried employee that is overtime exempt. The claimant is expected to work 40 hours per week. The claimant was expected to work Monday through Friday beginning at 8:00 a.m. until 5:00 p.m. However, these hours were flexible based on client needs. The claimant would take phone calls and answer emails outside of these hours.

The employer has the following policy:

"In providing these services to our clients, working with all members of our team and vendors, RJ Lawn & Landscape looks to uphold the five core values of our company. These values define who we are and how we interact with others. The core values should guide you in understanding our company's culture and how to best act in any

situation. At RJ Lawn & Landscape, we are always: HONEST with ourselves & others; provide PROFESSIONAL product; are DRIVEN to succeed and work efficiently; while displaying TEAMWORK with others; all in order to support the clean image of our BRAND.” (Exhibit 2, pg. 2).

RJ Core Values:

- Honest
- Professional
- Driven
- Teamwork
- Brand

This policy is contained in the employer’s employee handbook. The claimant was aware of this policy. (Exhibit 1).

As an account manager the claimant works with clients and provides them with proposals outlining the work the employer will complete for the client and the cost to the client. On February 16, 2024, Ms. McCarthy verbally coached the claimant about an issue of the claimant adding services to clients’ renewal contracts that were not part of the services the customers received the prior year. (Exhibit 9). The employer did not inform the claimant that his job was in jeopardy if this continued.

On June 17, 2024, Ms. McCarthy verbally coached the claimant about an increase in a proposal for a client. (Exhibit 7). The employer did not agree with the increase the claimant proposed to the client because the scope in work had not changed and there was not an increase in material cost to justify the increase in the proposal. The employer did not warn the claimant that his job was in jeopardy if this continued.

A client contacted the claimant and requested an estimate to repair their irrigation system. The employer’s Production Manager, Jake Newman, inspected the site and texted the claimant with the things that needed to be repaired and the cost of the repairs. (Exhibit 4). On July 26, 2024, the claimant emailed the client the work that needed to be completed and the costs. (Exhibit 3, pg. 1). The claimant also included in the email to the client: “Your turf was showing signs of heat stress and Jake Newman our Production Manager [diagnosed] the issues. They need to be taken care of ASAP. Otherwise you could kill the turf.” (Exhibit 3, pg. 1).

On July 29, 2024, another employee brought this email to Ms. McCarthy’s attention. Ms. McCarthy was concerned with the email because when turf becomes distressed it goes dormant and does not die. The employer was concerned with the claimant’s sales technique of using fear and dishonesty to generate business for the employer.

Ms. McCarthy began an investigation into the claimant’s other communications and discovered another message with existing clients that did not align with the employer’s core value of honesty. On July 31, 2024, the claimant sent a message to an existing client about weeds in the cracks and crevices of their concrete and told the employer that it was a safety hazard and proposed the employer do treatments for the client. (Exhibit 5).

On August 2, 2024, the employer discharged the claimant for not being a good fit with the company by using dishonest sales tactics with its customers. The employer determined that the claimant’s sales tactics violated the employer’s core value of honesty. (Exhibit 3, pg. 1). The

claimant was not aware that his job was in jeopardy at the time of his discharge. The claimant attributes his sales techniques to a course he was sent to by the employer to improve sales.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a and d provide:

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.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

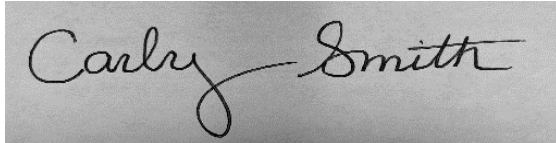
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if the employer 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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case the employer disagreed with the claimant's sales tactics to generate business for the employer. The employer determined the claimant was being dishonest to their customers when he told the customer that their turf would die. Prior to the discharge the claimant was not aware that his sales techniques needed to change. The claimant never received a warning informing him that his job was in jeopardy if he continued using these types of sales techniques. The employer's previous verbal coachings were not disciplinary warnings that put the claimant on notice that his job was in jeopardy. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need to be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Inasmuch as the employer had not previously warned claimant about his sales techniques, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The November 8, 2024, (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged from employment on August 2, 2024 for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

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Carly Smith  
Administrative Law Judge

December 23, 2024  
Decision Dated and Mailed

cs/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.