

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS L MINER
Claimant

A+ LAWN & LANDSCAPING INC
Employer

APPEAL 20A-UI-02115-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

A+ Lawn & Landscaping (employer) appealed a representative's February 26, 2020, decision (reference 01) that concluded Travis Miner (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2020. The claimant participated personally. The employer participated by Shawn Edwards, General Manager; Mark Harpenau, Manager; and Ken Erwin, Managing Partner. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 26, 2018, as a full-time production manager. This was his second period of employment. He signed for receipt of the employer's handbook on February 26, 2018. The handbook included a Code of Conduct that said everyone should treat everyone courteously. The employer did not issue him any written warnings during his employment.

The claimant and his manager spoke on the telephone almost every evening. They had a relationship where the claimant told his manager things and the manager calmed him down. Profanity was used in the calls but no warnings of termination were issued. The claimant had a boisterous way of acting. The general manager remembers telling the claimant twice that he would lose his job if he were out of control. The claimant does not remember those conversations.

On January 23, 2020, the claimant overslept and was late for an 11:00 p.m. snow removal shift. The manager yelled at the claimant and asked why he was late. The manager told someone to

drive the claimant home. The claimant yelled in response, "This is fucking bullshit". On January 26, 2020, the manager sent a text to the claimant saying he was suspended from January 27, 2020, to February 3, 2020, so the claimant could get everything figured out and a different Travis could return to work. There was no indication of the reason for the suspension. There was no warning of further infractions.

On January 31, 2020, the employer asked the claimant to attend a 4:00 p.m. meeting. The claimant said he could attend a short meeting but had to pick up his children from school. The claimant waited for at least fifteen minutes but the employer did not appear. The manager called the claimant and asked why he left. The claimant told the manager again that he had to retrieve his children. The claimant said, "This is fucking bullshit".

On February 3, 2020, the employer terminated the claimant. The claimant saw the employer show him papers about his job performance. He heard the employer tell him he was terminated for job performance. The employer remembers terminating the claimant for insubordination.

The claimant filed for unemployment insurance benefits with an effective date of February 2, 2020, and received \$6,501.00 in benefits after the separation from employment. The employer participated personally at the fact finding interview on February 19, 2020, by Mark Harpenau. Mr. Harpenau told the fact finder that the claimant was terminated for job performance and described the events of January 24, 2020, (sic) and January 31, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer repeatedly allowed the claimant to use profanity with his manager without formal warning. The manager issued the suspension by text. There was no information about its meaning. Was it issued because the claimant was tardy, used profanity, or because he was insubordinate? Was it an unpaid suspension of work to allow the claimant time to get in touch with his feelings? It is unclear from the text that there were any consequences after the suspension.

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, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met 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. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's February 26, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Beth A. Scheetz".

Beth A. Scheetz
Administrative Law Judge

April 24, 2020
Decision Dated and Mailed

bas/scn