

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAVID L JACKSON
Claimant

APPEAL NO. 18A-UI-03703-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANAWIM INC
Employer

**OC: 02/25/18
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Anawim (employer) appealed a representative's March 16, 2018, decision (reference 01) that concluded David Jackson (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 scheduled for April 17, 2018. The claimant participated personally. The employer participated by Holly Olson, Vice President of Finance and Accounting, and Philip Graham, Director of Property Service. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

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 April 25, 2016, as a full-time property services technician. The employer has a handbook but the claimant did not receive a copy. The employer talked to the claimant about performance issues but the claimant did not sign for receipt of any warnings.

On October 28, 2016, the employer had a discussion with the claimant about his performance. On July 14, 2017, the claimant was late for work. In a rush, he accidentally wrote down the wrong arrival time. The employer memorialized it in a memorandum dated July 17, 2017. On August 19, 2017, the employer listed a number of the claimant's performance issues in a document. The company indicated it would consider terminating the claimant if the issues were not corrected. The claimant did not remember the discussion.

On September 28, 2017, the employer had a counseling session with the claimant about his use of the employer's cellphone. The claimant's use was higher than other employees because he had a work-related injury. He requested and was granted permission from the employer to use

his cellphone to call the workers' compensation carrier. The employer notified the claimant that further infractions could result in termination from employment.

On February 22, 2018, the employer talked to the claimant about a number of concerns. It memorialized its concerns in a document that the employer signed. One of the concerns was that the claimant clocked in at 7:59 a.m. that morning and left work. The claimant arrived at 7:59 a.m. and then asked permission to return home to retrieve his keys. The employer gave him permission and told him to report to the warehouse. The document also talks about the claimant being assigned to complete a unit turn at 1352 12th Street.

On February 23, 2018, the employer terminated the claimant for failure to complete a unit turn at 2103 Forest and falsifying his timesheet on February 22, 2018.

The claimant filed for unemployment insurance benefits with an effective date of February 25, 2018. The employer participated personally in the fact-finding interview on March 15, 2018, by Holly Olson.

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(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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 issued the claimant a handbook or a warning with the claimant's signature regarding 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. A warning without the claimant's signature is just a memo to the employer's file. If the claimant refuses to sign, a witness's signature and date may be substituted. 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 March 16, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs