

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JUSTIN L PATON
924 S 1ST ST
OSKALOOSA IA 52577-3848**

**MASTER BUILDERS OF OSKALOOSA INC
1967 SUFFOLK RD
OSKALOOSA IA 52577**

APPEAL 20A-UI-02193-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

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:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(2) **OR YOU MAY** Make a request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
or
Fax (515)478-3528**

SERVICE INFORMATION:

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

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN L PATON
Claimant

MASTER BUILDERS OF OSKALOOSA INC
Employer

APPEAL 20A-UI-02193-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
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:

Master Builders of Oskaloosa (employer) appealed a representative's March 6, 2020, decision (reference 02) that concluded Justin Paton (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 24, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Michael Bunnell, Owner. 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 August 12, 2019, as a full-time construction laborer. He signed for receipt of the employer's handbook when he was hired.

On September 20, 2019, the claimant was working with the owner and a crew in Manson, IA, approximately three hours away from the claimant's home in Oskaloosa, Iowa. The crew had been there for a week and was planning to return home at 5:00 p.m. on September 20, 2019. The crew was ill from the food they had eaten while working during the job assignment. At about 8:30 or 9:00 a.m. on September 20, 2019, the claimant asked the owner to take him home because his stomach was bothering him. The owner refused but offered to take the claimant to the hospital. The claimant did not want to go to a hospital. He wanted to go to a doctor.

The claimant sat in the truck and waited until 11:30 a.m. when he again asked to go home. He made his request in front of the customer. The claimant's voice was loud and he cussed. The

owner finished up at 12:45 p.m. on Friday, September 20, 2019, and took the crew home early. The owner felt the claimant had quit by going home early.

On Monday, September 23, 2019, the claimant appeared for work and was told there was no work available. He called the owner and asked for his job back and was denied.

The claimant filed for unemployment insurance benefits with an effective date of February 16, 2020. The employer participated personally at the fact finding interview on March 5, 2020, by Misti Bunnell. The employer's witness did not have firsthand knowledge of the events leading to the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant did not form an intention to leave work. He was sick while on work assignment and wanted to go to a doctor or be at home. The employer gave him the option of going to the hospital or sitting in the truck. A refusal to go to the hospital is not a voluntary quit. The claimant appeared for work the following Monday, ready to perform services. The separation is not voluntary.

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).

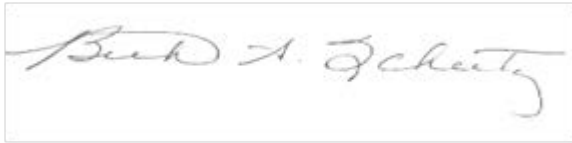
Iowa Admin. Code r. 871-24.32(4) provides:

(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 did not provide evidence of job-related misconduct. The employer terminated the claimant because the employer did not have a plan when employees become ill on the worksite. It is not unreasonable for a person who is ill to want to be at home. The claimant's behavior does not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 6, 2020, decision (reference 02) 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 27, 2020
Decision Dated and Mailed

bas/scn