

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICHARD E. LEWIS**  
Claimant

**IWD Appeal No. 21A-UI-06955**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**AMERICAN LAWN CARE INC.**  
Employer

**OC: 1/10/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 3, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2021. The claimant, Richard Lewis, appeared and testified. The employer, American Lawn Care, Inc., participated through co-owner Melinda Ginger. Gilbert Smale appeared as a witness and testified. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records, including the fact-finding documents. The claimant submitted exhibits: call logs and check stubs, which were admitted over objection.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for the employer in 2018. He last worked for the employer on November 25, 2020. He was terminated on November 27, 2020. Claimant was employed as a lawn specialist. At the time of his termination, he was a part-time employee.

Claimant and employer had different expectations. Claimant and his former co-worker Gilbert Smale both testified that full-time employees were salaried. Lawn specialists were responsible for a certain number of lawns per day, but once they completed their assignments, employees were free to go home, provided no one else needed help. Claimant believed he was handling his responsibilities; the employer did not. In September 2020, employer began requiring lawn specialists to work on Saturdays and claimant began refusing to do so. As a result, in October, claimant was moved to part-time employment and given an hourly rate rather than his full-time salary. His hours were reduced—for example, he was given twenty small lawns per day while Smale, an eager worker, might be given forty or forty-five and ample overtime pay. Other employees, and workers from another company this employer hired, had to cover for the work claimant (and others) were not getting done as the employer expected. Employer gave claimant verbal reprimands for his failure to get all his work done.

The final straw appears to be November 27—a Friday—when claimant called in at 7:09 a.m. to inform employer he would not be working that day. Later that day, the employer left claimant a voicemail in which claimant was informed he was terminated.

Claimant was denied benefits. He filed a timely appeal.

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

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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.

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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 Administrative Code rule 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 Administrative Code rule 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.

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

Here claimant was discharged. He did not intend to quit. He did not carry out an overt act expressing an intent to quit. It is clear claimant was discharged.

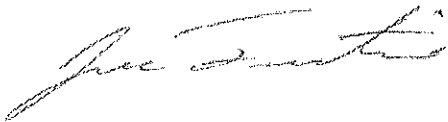
The undersigned further concludes claimant was discharged for misconduct. The undersigned finds credible employer's assertions that claimant was failing to complete all his work, going home early without checking to see if more work needed to be done, and refusing to work on Saturdays. The undersigned finds it credible these decisions violated known company policies and that claimant was reprimanded for his behavior. In addition, the undersigned notes claimant's own evidence supports the conclusion claimant was moved to part-time status, which should have alerted him of the employer's disapproval.

However, when claimant was terminated, there was no current act of disqualifying misconduct. Employer tolerated his refusal to work on Saturdays for at least two months. Employer moved claimant to part-time status, effectively starting over and wiping the slate clean, and then

terminated him a month later with no intervening current act of misconduct. The behavior that was cited for terminating claimant was his absence on November 27. While no employer likes an absent employee, calling in is not misconduct. Employer cannot now claim the earlier misconduct coupled with this routine absence equals a current act of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The March 3, 2021 (reference 01) unemployment insurance decision is reversed. Benefits are allowed, provided claimant is otherwise eligible.



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Joseph Ferrentino  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division

April 29, 2021  
Decision Dated and Mailed

JF/lb