

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONEY J GRIES**

Claimant

**APPEAL NO: 18A-UI-09205-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRADE 1 LLC**

Employer

**OC: 01/07/18**

**Claimant: Appellant (2)**

Iowa Code § 96.5(7) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Anthony J. Gries, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated August 24, 2018, (reference 04) that denied unemployment insurance benefits finding that the claimant voluntarily quit work on December 4, 2017 to accept other employment that did not materialize. The claimant's appeal was due to be postmarked or received by the Appeals Section by September 3, 2018. The appeal was received on September 4, 2018, beyond the ten day statutory time limit. The parties waived notice on the timeliness issue. A telephone conference hearing was scheduled and held on September 21, 2018. Claimant participated. Employer participated by Mr. Bruce Ihle, Operations Manager. Claimant's Exhibits 1 was admitted into the hearing record.

**ISSUE:**

Whether the claimant's appeal should be considered timely.

Whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Anthony J. Gries filed a claim for unemployment insurance benefits with an effective date of January 7, 2018 and received the customary information pamphlet that explains the unemployment compensation system and its requirements. Subsequently, Mr. Gries moved to a different address and changed his address of record with Iowa Workforce Development. On August 24, 2018, a disqualification decision was sent to Mr. Gries at his address of record. During that time, the claimant's new living quarters had been flooded and the claimant and his spouse were required to temporarily relocate. Mr. Gries filed a temporary change of address with the US Postal Service. The claimant or his spouse also checked the mailbox at the residence that had been flooded. On September 4, 2018, the claimant received the adjudicator's disqualification decision. Although the time to appeal had already passed, the claimant nevertheless filed an appeal explaining the reason for its late filing. Because the delay

was due to US Postal Service error, the claimant has established a good cause for late filing and his appeal is considered timely.

Mr. Gries was employed by Grade 1, LLC (a land grading company) from May, 2017 until December 4, 2017, when he was discharged by the employer for failing to report to work that day. Mr. Gries was employed as a full-time equipment operator/general worker and was paid by the hour. His immediate supervisor was Bruce Ihle.

At the time that Mr. Gries accepted employment with Grade 1, LLC, he discussed with Mr. Ihle the possibility that Mr. Gries might have to be absent from work on occasional and limited basis because of some previous obligations to clients of a lawn service that Mr. Gries had operated and was winding down. Mr. Ihle stated no objection.

The claimant had not requested any time off work related to his lawn service business until his request for the weekend of December 2 and 3, 2017. In a series of text messages sent to Mr. Ihle, the claimant explained his need to be absent on Monday, December 4, 2017 stating in effect that he needed to be absent just for that day to complete some work that could not be accomplished at any other time. Mr. Ihle text back that the company had work for Mr. Gries that day and that he was expected to report. The claimant then requested to take a portion of the day off. Although the employer was reluctant, the employer agreed to Mr. Gries reporting late on Monday, December 4, 2017. The employer contacted Mr. Gries on the afternoon of December 4, 2017, however the claimant had not completed the lawn project and replied that the project was taking longer than expected and that he would not be able to report that day. When the claimant asked for information about the following days' work assignment, he was instructed to return his timesheets and keys and his employment with the company came to an end.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional work-connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

Because the claimant was discharged, the employer has the burden of proof in this matter. The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

No aspect of the contract for employment is more basic than the right of the employer to expect employees to report for work on the hour and day agreed upon and a reoccurring failure to honor that obligation shows a substantial disregard of the employer's interests and standards of behavior. The Supreme Court of the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The court held that the absences must be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The court further held that absences due to matters of "personal responsibility" such as transportation issues or over-sleeping are considered unexcused. The court further held that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

However, the court in the case of *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence did not constitute misconduct sufficient to warrant the denial of unemployment insurance benefits, even in a case in which the employee disregarded the employer's instructions to notify the employer that the and the employee had failed to do so.

The evidence in this matter establishes that although Mr. Gries may have been absent on other occasions, those absences were authorized by the employer for vacation or excused by the employer because the claimant was ill and had properly requested the time off.

Based upon the evidence in the hearing record, the administrative law judge concludes that Mr. Gries' discharge from employment took place because of his absence from work on Monday, December 4, 2017 when Mr. Gries did not report to work although he had been requested to do so by employer. The issue is not whether the employer had a right to discharge Mr. Gries for this reason, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Unemployment Security law. While the decision to terminate Mr. Gries

may have been a sound decision from a management viewpoint, the evidence establishes that Mr. Gries' discharge was based upon a single unexcused absence and therefore does not constitute disqualifying misconduct based upon the decision of the Iowa Supreme Court in the case of *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). Accordingly, the claimant is held eligible to receive unemployment insurance benefits provided that he meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's unemployment insurance decision dated August 24, 2018, reference 04, is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn