

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TRAVIS L MINER
Claimant

A+ LAWN & LANDSCAPING INC
Employer

APPEAL 22A-UI-19244-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/23/22
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Travis L. Miner, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) November 21, 2022 (reference 01) unemployment insurance (UI) decision. The decision denied Mr. Miner REGULAR (state) UI benefits because IWD concluded that the employer discharged him from work on October 22, 2022 for theft of company property. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Mr. Miner and the employer. A telephone hearing was held on January 25, 2023. Mr. Miner participated personally. E. J. Flynn, attorney, represented Mr. Miner. The employer participated through Shawn Edwards, general manager, Ken Erwin, managing partner, and Ethan Dykstra, managing director/co-owner. Douglas Fulton, attorney, represented the employer. The administrative law judge admitted Employer's Exhibits 1-4 and Claimant's Exhibits A-I.

ISSUE:

Did the employer discharge Mr. Miner from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Miner began working for the employer just under ten years ago. He worked as a full-time client service manager. His employment ended on October 22, 2022.

In September 2022, the employer denied a charge on the company credit card. The transaction had occurred on June 24, 2022 for the purchase of several items, including an outdoor camera for \$89.99, and a headset with mic for \$14.99.¹ The employer contacted Menards and asked about the transaction.

Unrelated, the employer suspended Mr. Miner Monday – Sunday, October 17-23, 2022 for attendance issues. On Monday, October 17, Mr. Edwards told Mr. Miner to return the employer's tablet and cell phone so the employer could make sure Mr. Miner's work was addressed during the suspension. By Wednesday, October 20, Mr. Miner had not returned the

¹ Employer's Exhibit 4, pg. A +000009.

employer's laptop or phone. Mr. Edwards contacted Mr. Miner that day and told him again to return the employer's tablet and cell phone.

At some point while Mr. Miner was suspended the employer received a picture from Menards of the person who had made the June 24, 2022 purchase.² The picture showed a person wearing a hat with the employer's logo on it.³ Mr. Edwards identified the person in the picture as Mr. Miner. The employer had previously asked Mr. Miner for the receipt for this transaction. Mr. Miner had stated that he did not have one and the employer did not pursue it at that time. The employer's policy, which Mr. Miner received on, or about his hire date, prohibits theft and provides that employees who steal are subject to termination of their employment. Mr. Miner testified that he did not purchase an outdoor camera or a headset with mic on June 24, did not know how those items were charged to the employer's card, and he did not have the items. Based on the Menard's transaction, the employer looked into other purchases Mr. Miner had made using the company credit card.

Mr. Miner had submitted a purchase order to the employer on June 21, 2022 for an oil change at LOF Express Oil Change (LOF) for one of the employer's Volt vehicles⁴ Soon after the purchase, the employer's accounts payable staff person had asked Mr. Miner three times for a receipt. Mr. Miner said he did not have one. The accounts payable staff person asked Mr. Edwards for help resolving the issue. Mr. Edwards told the accounts payable staff person to just pay the bill. After the issue with the Menards charge, Mr. Edwards re-reviewed the LOF charge, contacted LOF and asked for a receipt. LOF sent the employer a receipt for an oil change that was conducted on June 21, 2022 on a Nissan/Datsun Sentra and paid for using the employer's credit card.⁵ LOF also sent the employer a picture of the Nissan Sentra on which LOF had changed the oil.⁶ Mr. Miner testified in the appeal hearing that LOF had made a mistake when they listed the Nissan Sentra on the receipt instead of the employer's Volt vehicle.

Mr. Miner had submitted a receipt to the employer sometime in early September 2022 for take out food.⁷ The receipt did not contain a business name, or price.⁸ Mr. Miner had written on the receipt "Exile," the name of a restaurant, "\$87.00," "took lunch to Oral Surg. PC two places," and "platter."⁹ Mr. Miner had told the employer that he had taken the client Oral Surg. PC to lunch at the Exile on September 6, 2022. The employer asked Mr. Miner for a proper receipt. Mr. Miner said he did not have one. The employer pulled the global positioning system (GPS) report September 6 for the vehicle Mr. Miner was driving that day. The report showed Mr. Miner at Oral Surg. PC at about 1:25 p.m. and again at about 3:45 p.m. that day.¹⁰ The report also showed Mr. Miner at Exile at about 5:15 p.m. that day and at his home at about 5:50 p.m.¹¹ The report shows Mr. Miner did not go to Oral Surg. PC after he left Exile.¹² Mr. Miner testified that he did not take the client to lunch, but he took lunch to the client. Mr. Miner further testified that he picked up two platters from Exile on September 6, brought them to his house, stored them at his house overnight, and brought them to Oral Surg. PC the next day. Mr. Miner also testified that the receipt he turned in was the receipt that Exile had placed on the outside of the bag.

² *Id.* at A +000011.

³ *Id.*

⁴ Claimant's Exhibit B, pg. 1.

⁵ Employer's Exhibit 4, pg. A +000010.

⁶ *Id.* at A +000008.

⁷ *Id.* at A +000012.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at A +000015.

¹¹ *Id.* at A +000013.

¹² *Id.*

While the employer was investigating the credit card charges, customers reported to the employer that Mr. Miner was not responding to them. By Thursday, October 20 Mr. Miner still had not returned the employer's tablet or cell phone. That day, Mr. Edwards asked Mr. Dykstra to go to Mr. Miner's house and pick up the employer's tablet and cell phone. Mr. Dykstra went to Mr. Miner's house. Mr. Miner invited Mr. Dykstra inside. Mr. Dykstra saw the employer's tablet on Mr. Miner's countertop. Mr. Dykstra asked Mr. Miner for the employer's tablet and cell phone. Mr. Miner refused to do so and told Mr. Dykstra to leave his property. Mr. Dykstra did so. Mr. Dykstra parked on the next street over and called Mr. Edwards and reported what had happened. Mr. Edwards told Mr. Dykstra to call the police. Mr. Dykstra called the Ankeny Iowa Police Department. The police talked with Mr. Dykstra and Mr. Miner separately. Mr. Miner gave the police the employer's cell phone and told the police that the laptop was not at his house. While the police were there Mr. Edwards texted Mr. Miner and said that he was not fired but the employer needed the tablet. Mr. Miner agreed to return the employer's tablet to the employer the following day, Friday, October 21.

Mr. Miner did not return the laptop that Friday. That day, the employer decided to terminate Mr. Miner's employment for insubordination for not returning the employer's tablet when directed to do so and for making unauthorized charges on the employer's credit card. On Saturday, October 22, Mr. Miner returned the tablet to Mr. Dykstra at about 9:30 a.m. Mr. Miner testified that he told Mr. Dykstra to leave his property on October 20 because Mr. Dykstra worked in a different division of the company. The employer told Mr. Miner that his employment was over effective immediately for making unauthorized charges on the employer's credit card.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Miner from employment for no disqualifying reason.

Iowa Code section 96.5(2)(a) and (d) provide:

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.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of such the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(13) Theft of an employer or coworker's funds or property.

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.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature.¹³

The employer has the burden of proof in establishing disqualifying job misconduct.¹⁴ The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.¹⁵ Misconduct must be "substantial" to warrant a denial of job insurance benefits.¹⁶

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.¹⁷ The administrative law judge may believe all, part or none of any witness's testimony.¹⁸ In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience.¹⁹ In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice.²⁰

¹³ *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

¹⁴ *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

¹⁵ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

¹⁶ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

¹⁷ *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

¹⁸ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

¹⁹ *Id.*

²⁰ *Id.*

The findings of fact show how the undersigned administrative law judge has resolved the disputed factual issues in this case. The undersigned assessed the credibility of the witnesses who testified during the hearing, considered the applicable factors listed above, and used his own common sense and experience.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Miner stole from the employer by making improper charges on the employer's credit card. Mr. Miner's testimony about not knowing about the camera and headset charges at Menards, LOF making a mistake and listing the wrong car on the receipt for the oil change, and Mr. Miner picking up food for a client and storing at his house overnight to take to the client the next day is not credible. Furthermore, the employer has established that Mr. Miner refused to return the employer's equipment, even after Mr. Edwards' repeated asks, and even though Mr. Dykstra, a co-owner, asked him to do so. This is misconduct. Since the employer has established disqualifying, job-related misconduct, benefits are denied.

DECISION:

The November 21, 2022 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Miner from employment for job-related misconduct. Benefits are withheld until such time as Mr. Miner has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

January 31, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

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

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.