

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL M NOVAK**  
Claimant

**APPEAL NO. 07A-UI-07880-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROLAWN PLUS INC**  
Employer

**OC: 11-26-06 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 8, 2007, reference 07, decision that allowed benefits. After due notice was issued, a hearing was held on September 4, 2007. The claimant did not participate. The employer did participate through Jesse Parker, Manager and John Robson, President/Owner.

**ISSUES:**

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a member of the mowing crew seasonal full time beginning May 2007 through July 5, 2007 when he was discharged.

On or about June 29 the claimant mowed over a garden hose at a business location where he was assigned to mow the lawn. The claimant concealed from the employer that he had damaged the customer's hose. When the employer's crew showed up the next week, the customer complained about the hose which the employer was obligated to replace. The claimant had previously been disciplined for running over gutters that the employer had to pay to have replaced. The claimant knew that he was to slow down and use more care in performing the job because he had been warned by both Mr. Robson and Mr. Parker that he was going too fast to safely mow the lawns. On a prior occasion when the claimant was being disciplined for running over a bush because he was running the mower too fast, he begged Mr. Robson to give him another chance. The claimant knew that he was to operate the mower more slowly to prevent damage to customers' property.

The claimant has received unemployment benefits since filing a claim with an effective date of November 26, 2006.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 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.

While accidents can happen to anyone, an employee is still obligated to follow the reasonable instructions of the employer in performing the tasks. Mr. Robson and Mr. Parker both instructed the claimant to operate the mower more slowly to prevent the type of damage he was doing to customer's property. The claimant did not slow down. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant also received the handbook which required he report any damage to the employer. The claimant did not slow down despite repeated instructions to do so and he failed to report yet more damage to a customer's property. The claimant knew that his actions placed his job in jeopardy because he had to ask the employer to give him another chance after his first set of accidents. His failure to follow the employer's reasonable instruction to slow down led to additional accidents and does constitute disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The August 8, 2007, reference 07, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,350.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css