

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE GROWCOCK
Claimant

APPEAL NO. 16A-UI-08972-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THUNDER VALLEY AG LLP
Employer

**OC: 07/17/16
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Steve Growcock (claimant) appealed a representative's August 11, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Thunder Valley Ag (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 6, 2016. The claimant participated personally. The employer participated by Klint Bissell, Owner/Operator; Eric Rasmussen, Owner/Partner; Doug Goracke, Certified Public Accountant; and Aimee Bissell, Office Manager. The employer offered and Exhibit One was received into evidence.

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 December 3, 2014, as a full-time cowboy. The employer did not have a handbook. No written warnings were issued to the claimant by the employer. The employer talked to the claimant about some things but no consequences were given.

The claimant and two other employees mowed hay the previous season. In 2016, the employer wanted the claimant to do all the mowing along with his other responsibilities. In 2016, there was rain and the bailer and rake broke down. The claimant could not get all the mowing done.

The employer had five hundred and fifty head of cow/calf pairs. The claimant and other employees fed them what the nutritionist told employees to feed them. Since April 2016, the operators told the employers that the cattle were not gaining enough weight. The nutritionist did not change the amount or type of feed.

In June 2016, one of the owners told the claimant not to take the cattle to the Clarinda Livestock Auction. Later, the same owner told the claimant the feed was running low or almost gone and the cattle should have been sold weeks ago. The owner told the claimant he was in charge and he should take care of the situation. The claimant sold some of the cattle at the Clarinda Livestock Auction.

On July 5, 2016, the employer terminated the claimant for not mowing, for selling cattle at the Clarinda Livestock Auction, and because the feedlot cattle did not gain weight.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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 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(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.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The claimant followed instructions regarding the feed and selling. He did his best with mowing, despite rain, and broken equipment. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 11, 2016, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs