

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN R DALTON
Claimant

APPEAL NO: 12A-UI-13906-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A+ LAWN & LANDSCAPING INC
Employer

OC: 11/13/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Melvin R. Dalton (claimant) appealed a representative's November 16, 2012 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from A+ Lawn & Landscaping, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 11, 2013. The claimant participated in the hearing. Ken Erwin appeared on the employer's behalf and presented testimony from one other witness, Mark Harpeneau. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on September 20, 2012. He worked full time as a landscape laborer. His last day of work was October 19, 2012. The employer discharged him on October 26, 2012. The reason asserted for the discharge was excessive absenteeism.

The claimant's work schedule was 8:00 a.m. to 5:00 p.m. Monday through Friday and usually on Saturdays. The employer had been given a written warning for attendance on October 1, 2012. He was then a no-call, no-show for work on October 20 and October 22. On October 23 he was a no-call, no-show in the morning, then called in the afternoon and said he had been to the doctor but would come into work a little later, but did not come in. On October 24 he was a no-call, no-show for the first part of the morning, and then at 9:45 a.m. sent a text message saying he would come in, but then did not come in. On October 25 he was a no-call, no-show. He was again a no-call, no-show on October 26. The employer then sent the claimant a text message asking him to come in; when he did come in, the employer informed him he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). The claimant's final absences were not shown to be excused or due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 16, 2012 decision (reference 04) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 26, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs