

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERITT D ROUSE
Claimant

THE GREEN THUMBERS INC
Employer

APPEAL 21A-UI-21045-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/01/21
Claimant: Respondent (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On September 24, 2021, the employer/appellant filed an appeal from the September 24, 2021, (reference 01) unemployment insurance decision that allowed benefits based on claimant being dismissed but there was no willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on November 12, 2021. Claimant requested a postponement. The hearing has rescheduled and held December 13, 2021. Claimant participated at the hearing. Employer participated through President, Andrew Kay. Administrative notice was taken of claimant's administrative benefit records.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
Should claimant repay benefits?
Should the employer be charged due to employer participation in fact finding?
Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 30, 2019. Claimant last worked as a full-time landscape designer. Claimant was separated from employment on August 3, 2021, when he was discharged.

Claimant was discharged for his constant tardiness. The employer could not provide specific dates claimant was tardy for work. The employer has an attendance policy but did not have it available for the hearing. The claimant is unaware of the attendance policy. The employer did not provide proof that claimant received a copy of the attendance policy. On July 13, 2021, the employer spoke to claimant about his tardiness for work. The employer did not notify claimant that his job was in jeopardy if his attendance did not improve.

The employer also terminated claimant because of his failure to follow up with clients. The claimant had three incidents of not following up with clients. The employer discussed with claimant his failure to follow up with clients, however, the claimant was not aware that his job was in jeopardy.

The claimant filed for benefits with an effective date of August 1, 2021. Claimant's weekly benefit amount was \$551.00. Claimant received benefits beginning week ending August 27, 2021, through November 27, 2021.

The employer was not contacted for a fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

In this case there was no final act of misconduct the claimant committed that would disqualify him from receiving benefits. The employer could not testify with specificity regarding the days claimant was tardy. Additionally, the incidents involving the failure to follow up with clients are past acts of misconduct. To disqualify a claimant for job-related misconduct the act needs to be based on a current act. As such, employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify him from receiving benefits. Benefits are allowed. The employer's account shall be charged.

The issue of whether claimant was overpaid benefits, whether claimant should repay the benefits, and whether the employer participated in the fact-finding interview is moot since the claimant is allowed benefits.

DECISION:

The September 14, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

The issue of whether claimant was overpaid benefits, whether claimant should repay the benefits, and whether the employer participated in the fact-finding interview is moot.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 19, 2022

Decision Dated and Mailed

cs/abd