

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY M FLANAGAN
Claimant

APPEAL NO. 15A-UI-00073-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUBURBAN LANDSCAPE LLC
Employer

OC: 11/30/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Suburban Landscape (employer) appealed a representative's December 23, 2014, decision (reference 01) that concluded Gregory Flanagan (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 28, 2015. The claimant participated personally. The employer participated by John Blong, President. Exhibit D-1 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 in June 2012, as a full-time seasonal chemical applicator working April through November. The claimant's last day of work was August 15, 2014. On August 17, 2014, the claimant's wife suffered a subarachnoid cranial hemorrhage and was placed in neurosurgical intensive care. On August 18, 2014, the claimant started to journal all his activities in a notebook given to him by a hospital worker.

On August 18, 2014, he called the president of the company and informed him of the situation. The president told him to let him know what was going on. On August 20, 2014, the claimant called the president again and discovered he was out of the country. The claimant called his supervisor. The supervisor was unaware of the situation. He told the claimant not to worry about work. On August 25 and September 1, 2014, the claimant sent a text to the supervisor with updates. On September 5, 2014, the claimant sent a text with an update to the president. On September 9, 2014, the president sent a text to the claimant saying he had not heard from the claimant, the claimant should turn in the company's property, and the employer was going in a different direction. The claimant assumed he was discharged and started seeking other employment.

The claimant filed for unemployment insurance benefits with an effective date of November 30, 2014. The employer did not participate at the fact-finding interview on December 22, 2014. The employer was on a hunting trip and did not open the mail until he returned on the day of the interview.

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).

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). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the claimant's testimony to be more credible as he had recorded the dates and events in a journal. The employer's testimony was not consistent.

DECISION:

The representative's December 23, 2014, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs