

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLOS A TORRES
Claimant

AUTHIER PROPERTIES LLC
Employer

APPEAL 19A-UI-00347-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
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:

The employer filed an appeal from the January 4, 2019 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was dismissed from work because his job was finished. The parties were properly notified of the hearing. A telephonic hearing was held on January 28, 2019. The claimant, Carlos Torres, participated. Spanish/English interpreter Claudio (ID number 6347) from CTS Language Link provided interpretation services for the hearing. The employer, Authier Properties, L.L.C., participated through Jerry Authier, Managing Member. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a seasonal employee, most recently as a groundskeeper, from sometime in 2013 until September 1, 2018, when he was discharged for a lack of work. The final incident leading to claimant's discharge occurred on September 1. That day, claimant was talking to assistant superintendent Dolan Brown and made a comment that the superintendent was child-like. Claimant was frustrated because he did not feel he and other employees were being given sufficient time to eat and to rest. Claimant had never been warned about his comments in the workplace before. According to Authier, claimant also had an issue with tardiness. Authier did not know the dates on which claimant was late to work, and claimant denies that he was late to work on September 1.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$756.00, since filing a claim with an effective date of December 9, 2018, and a reopened date of December 23, 2018, for the four weeks ending January 19, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 the 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 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. 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.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. In this case, while claimant's comment was not respectful, it does not rise to the level of insubordination. Claimant did not make the comment directly to the superintendent, he did not use profanity or vulgar language, and his comment was not coupled with a refusal to follow instructions, threats of violence, or other objectionable behavior. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed, provided the claimant is otherwise eligible. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The January 4, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn