

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY E YERINGTON**  
Claimant

**APPEAL NO. 12A-UI-10811-VST**

**RAYMOND-MUSCATINE INC**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/08/12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated August 27, 2012, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 4, 2012. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Jeremy Yerington.

**ISSUE:**

.Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures stand up forklifts known as “tuggers.” The claimant was initially hired through a temporary employment service and became a full-time employee of the employer on June 20, 2012. He worked third shift, which was new to him. He had attendance problems and was given a written warning concerning his attendance on January 6, 2012.

The claimant was able to transfer to a first position. His attendance problems continued, particularly tardiness. He was late five times in the month of July 2012, due to transportation problems. He was given a final written warning on July 30, 2012. On August 1, 2012, the claimant did not hear his alarm and overslept. He was late for work. He called his employer and was told he was terminated.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

871 IAC 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such as transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

Although the employer did not participate in the hearing, the claimant's testimony established that he was terminated for excessive unexcused absenteeism, specifically tardiness. The claimant was dependent upon others to give him a ride to work. He had no independent means of transportation. During July 2012, the claimant testified that he was late five times because a fellow employee who gave him a ride was late. The claimant received a final written warning on July 30, 2012. He knew his job was in jeopardy. Unfortunately he was late again on August 1, 2012, because he overslept. The claimant's tardiness was due to matters of personal responsibility and the absence is considered unexcused. Six instances of tardiness in approximately one month's time is excessive unexcused absenteeism. This is misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated August 27, 2012, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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