

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SID R FOLTZ
Claimant

APPEAL NO. 07A-UI-03810-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/18/07 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sid Foltz (claimant) appealed a representative's April 9, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with The University of Iowa (employer) for excessive unexcused absenteeism and tardiness after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2007. The claimant participated personally. The employer was represented by David Bergeon, Human Resources Specialist, and participated by Lori Berger, Human Resources Manager. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 on November 1, 2000, as a full-time Kitchen Helper One. The employer issued the claimant a written warning on December 22, 2005, for tardiness and working hours in excess of his schedule without approval. On March 20, 2006, the employer issued the claimant a written warning and one-day suspension for tardiness. The claimant received a written warning and three-day suspension on May 26, 2006, for failure to provide medical documentation when it was due. On July 14, 2006, the employer issued the claimant a five-day suspension and written warning for leaving early without permission.

On March 15, 2007, the claimant did not appear for work at his scheduled start time of 12:30 p.m. At 12:55 p.m. the employer telephoned the claimant. The claimant's alarm did not go off and he had overslept. The employer terminated the claimant on March 15, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 275 N.W.2d 187 (Iowa 1984). Three incidents of tardiness or absenteeism after a warning constitutes misconduct. Clark v. Iowa Department of Job Service, 317 N.W.2d 517 (Iowa App. 1982). An employer has a right to expect employees to appear for work when scheduled. The claimant disregarded the employer's right by repeatedly failing to follow instructions and work the hours he was scheduled. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's April 9, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs