

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFFORD M WILLIAMS

Claimant

APPEAL NO. 11A-UI-16527-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARLEY'S & SATHERS CANDY CO INC

Employer

OC: 11/20/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 21, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 30, 2012. Claimant participated. The employer participated by Robin Travis, human resources manager. The record consists of the testimony of Robin Travis; the testimony of Clifford Williams; and Employer's Exhibits 1-7. The employer faxed the documents after the hearing because the administrative law judge did not have a copy. The claimant had a copy. When the exhibits were reviewed and marked at the hearing, the administrative law judge thought there were six pages of the employee handbook. There were only five pages in the fax received. This explains why there are seven employee exhibits instead of eight as indicated in the tape recording of the hearing.

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 is a candy manufacturer. The claimant was hired on January 24, 2011, as a packaging machine operator on the "B" run. This shift runs from 3:00 p.m. to 11:30 p.m. The claimant was a full-time employee. The claimant's last day of work was July 14, 2011. He was terminated on July 25, 2011.

The employer has a written point policy that calls for termination when eight points is reached in a rolling nine month calendar. The claimant was aware of this policy. The claimant was tardy on May 28, 2011, and left early on June 8, 2011. The claimant then called to report absences on July 18, 2011; July 19, 2011; July 20, 2011; July 21, 2011; and July 22, 2011. The claimant was a no-call/no-show on July 25, 2011. The claimant felt it was too hot to come to work during the week of July 18, 2011. He did not report any problems with heat to his supervisors; his union

steward; or management. The plant is air conditioned and fans and cooling rags are provided in the back packing area for additional relief from heat.

REASONING AND CONCLUSIONS OF LAW:

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.

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 transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The evidence established that the claimant was discharged for excessive, unexcused absenteeism. The claimant admitted that he was absent on the days identified by the employer and that he had "pointed out." When asked why he did not come to work, the claimant said he thought it was too hot to work. He was in the back packing area and the air conditioning did not work well back there. He did not report to anyone that he was unable to work in the heat. The employer had fans and cooling rags for use if necessary. The most reasonable inference from the evidence is that the claimant decided that he did not want to work in the heat and he chose not to bring up the problem to anyone who might assist him. The claimant was aware of the employer's attendance policy. Since the evidence shows that the claimant was terminated for excessive unexcused absenteeism, misconduct had been shown. Benefits are denied.

DECISION:

The decision of the representative dated December 21, 2011, reference 01, 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs