

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S WATKINS

Claimant

APPEAL NO: 10A-UI-06700-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC

Employer

OC: 03/28/10

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Schenker Logistics, Inc. (employer) appealed a representative's April 19, 2010 decision (reference 01) that concluded Michael S. Watkins (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 22, 2010. The claimant participated in the hearing. Steve Solovic of ADP/TALX UC Express appeared on the employer's behalf and presented testimony from one witness, Jim Worth. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 10, 2006. He worked full time as label room supervisor on the first shift at the employer's Iowa City, Iowa business client's production facility. His last day of work was March 26, 2010. The employer discharged him on that date, 2010. The stated reason for the discharge was insubordination.

In about mid-February the claimant had submitted a request to his supervisor, Mr. Worth, requesting vacation days on March 17, March 18, and March 19. Mr. Worth denied the request as the claimant had already granted one of his other employees those days off. In their discussion, Mr. Worth suggested to the claimant that "if he could make arrangements for coverage, he could possibly work things out" so that the claimant could be granted some or all of that time. While the claimant asserts he did make some arrangements for coverage by having a third shift person stay late and having a second shift person come early, he did not report this to Mr. Worth for approval to see if this was adequate so that his vacation request could be approved.

On March 17 the claimant called in and left a message for Mr. Worth that he would be absent, no reason given. Mr. Worth attempted to call the claimant back and left a message for the claimant to call him again, but the claimant did not respond that day. On March 18 the claimant called in and spoke directly to Mr. Worth; he told Mr. Worth he would be absent due to a "family emergency." On March 19 the claimant again called in and left a message for Mr. Worth that he would be absent. During those days it did not appear to Mr. Worth that there was adequate coverage for the claimant's shift, as he had to go and fill in himself to cover for the claimant's absence in the label room.

On March 22 the claimant returned to work and had a discussion with Mr. Worth in which Mr. Worth again queried the claimant about the reason for the absences on the days for which his vacation request had been denied. The claimant initially reported again that it was due to a "family emergency." When Mr. Worth pressed for more details, the claimant indicated that it was due to an out of town religious event. In fact, on March 17 the claimant had taken his entire family to Des Moines to attend a religious convention and meeting. He had initially given some consideration to returning home the night of March 17 and reporting for work on March 18, but determined that that was not practical, so stayed at the convention and meeting for the entire three days. This was not a "family emergency."

Because the employer concluded that the claimant had been insubordinate to his manager by effectively taking the days off after his request had been denied, and also by misrepresenting the reason for his absence to his manager, the employer determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective March 28, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's taking the days off after his request had been denied and his providing a false explanation that it was due to a "family emergency" shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's April 19, 2010 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 26, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css