

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TROY D HUDSON
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ALLIED CONSTRUCTION SERVICES
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Appeal Number: 05A-UI-03353-DW
OC: 02/27/05 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Troy D. Hudson (claimant) appealed a representative's March 22, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Allied Construction Services (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines on April 26, 2005. The claimant participated in the hearing. Bill Haynes, the warehouse manager, and Steve Munger appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2004. The claimant worked as a full-time truck driver/laborer. Haynes was the claimant's supervisor.

During his employment, the claimant received one written warning on December 2, 2004. This warning was for equipment abuse and not following the employer's directions. (Employer Exhibit One.) The claimant never received any written warnings for attendance issues even though he was late 13 times. The claimant recalls two or three times the employer talked to him about reporting to work late. The employer documented that during the claimant's employment the employer talked to the claimant eight times about reporting to work late. The claimant does not recall a February 9 verbal warning where the employer told him if reported to work late again he would be suspended or terminated.

On February 16, the claimant overslept and called the employer as soon as he woke up, either 6:50 or 7:10 a.m. The claimant knew he would be working at a job site in Ankeny that day and asked if someone could drive the truck to Ankeny since the claimant lives in Ankeny. This was not feasible and the claimant indicated it took him about 20 minutes to drive to work from his home. It took the claimant 45 minutes to get to work after he initially called the employer. By the time the claimant got to work, the employer told him he was not needed. The next day, the employer suspended the claimant for poor attendance. The employer then discharged the claimant on February 18, 2005 for repeatedly reporting to work late.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant because he repeatedly reported to work late. However, until February 16, 2005, the employer did not consider the claimant's attendance a major issue. Even though the employer gave the claimant a written warning for equipment abuse, the employer never gave the claimant a written warning for his attendance. The fact the employer documented talking to the claimant eight times about his attendance and the claimant only remembering two or three times that the employer informally talked to him about getting to work on time shows the importance of written warnings. Even though the claimant may not have been a dependable or reliable employee, the facts do not establish he was put on notice that his job was in jeopardy for attendance issues. As a result, the facts do not establish that the claimant intentionally disregarded the employer's interests by failing to report to work as scheduled. Even if the claimant had received notice, if February 16 was the first time he overslept, his failure to work as scheduled on February 16 would not constitute work-connected misconduct either. Since the evidence does not establish that the claimant committed a current act of work-connected misconduct, he is qualified to receive benefits as of February 27, 2005.

DECISION:

The representative's March 22, 2005 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 27, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs