

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUSTIN M BOYD
Claimant

DEE ZEE INC
Employer

APPEAL NO. 13A-UI-08944-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/14/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated August 2, 2013, reference 02, that held he was discharged for excessive unexcused absenteeism and tardiness on July 7, 2013, and benefits are denied. A hearing was held on September 9, 2013. The claimant participated. Lacey Leichter, HR Assistant, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant began employment on December 2, 2012 and last worked as a full-time machine operator on July 7, 2013. The claimant received the employer attendance policy that provides an employee is given points for violations.

The claimant received a final warning on May 13, 2013 for accumulating 32 points and three-day suspension (May 13 – 16). He was advised that a further accumulation of attendance points could lead to employment termination. Twenty-eight points for a first year employee is grounds for discharge.

Claimant clocked-in at 11:49 p.m. for his 11:00 p.m. work shift on July 7. He was scheduled to work until 7:00 p.m. but he clocked-out early due to child care problems that was the same issue as to why he was late. The employer discharged claimant on July 8 for excessive attendance points.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes employer established misconduct in the discharge of the claimant on July 8, 2013, for excessive "unexcused" absenteeism/tardiness.

The employer gave claimant a final written warning with a three-day suspension he attendance points were excessive to the point of termination. Late to work or leaving early due to child care issues is not excusable and in consideration of the final warning it constitutes job disqualifying misconduct.

DECISION:

The decision of the representative dated August 2, 2013, reference 02, is affirmed. The claimant was discharged for misconduct in connection with employment on July 8, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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