

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM L SMITH**  
Claimant

**APPEAL NO. 14A-UI-05294-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DARLING INTERNATIONAL INC**  
Employer

**OC: 03/30/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 22, 2014, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from employment under disqualifying conditions. After due notice was provided, a telephone hearing was held on June 11, 2014. Claimant participated. Participating as the claimant's representative was Ms. Donna Anderson, the claimant's fiancée. The employer participated by Ms. Lezah Geerts-Creed.

**ISSUE:**

The issues are whether the claimant's appeal should be considered timely and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Mr. Smith received the adjudicator's determination dated April 22, 2014, reference 01. The claimant disagreed with the decision and attempted to file an appeal by mailing his appeal by the U.S. Postal Service to the Appeals Section on May 1, 2014. After waiting a period of time, Mr. Smith called the agency and determined that his appeal had not been received in the mail. The claimant immediately filed a second appeal (See Claimant's Exhibit One) by letter referencing his earlier attempt to appeal this matter on May 1, 2014. Because the claimant's late appeal was due to error or delay or the action of the United States Postal Service pursuant to 871 IAC 24.35(2), the administrative law judge concludes that the claimant's appeal is considered timely.

William Smith was employed by Darling International, Inc. from December 22, 1978 until March 26, 2014 when he was discharged for excessive tardiness and sleeping on the job. At the time of the job separation Mr. Smith worked as a full-time waste water operator working on the company's second shift beginning at 5:00 p.m. and working until the end of work each night. Mr. Smith was paid by the hour. His immediate supervisor was Mr. Doug Lippins.

Mr. Smith was discharged from his employment with Darling International, Inc. on March 26, 2014 after he reported to work late on March 24, 2014 and later was observed sleeping on the job by both a company corporate engineer and also by his immediate supervisor, Doug Lippins. Mr. Smith also reported to work late the following work day.

Mr. Smith received a written warning and suspension for reporting to work late and for sleeping on the job. A warning was issued to him on December 27, 2013 and was issued as a final warning informing Mr. Smith that he could face a termination from employment for any further violations. On March 4, 2014, Mr. Smith was again warned about his lack of punctuality after he reported to work again late. The employer indicated that Mr. Smith had been tardy on approximately 12 occasions leading to that warning.

It is the claimant's position that he does "recall" sleeping on the job or being awakened by the company's corporate engineer or his supervisor. Mr. Smith's late arrivals at work were caused primarily by recurring transportation issues.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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.

In discharge cases the employer has the burden of proof in establishing disqualifying job misconduct. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the employer testified with specificity as to the dates, the times and the individuals who observed Mr. Smith sleeping on the job on the night of March 24, 2014. Two different management individuals independently reported to the company that they had observed the claimant sleeping on the job and had attempted to awaken the claimant. In contrast, Mr. Smith asserts he does not recall sleeping on the job or being awakened by the supervisor or the corporate engineer. The evidence in the record establishes that Mr. Smith had previously been warned about sleeping on the job and had received a final warning from the company and a suspension for sleeping on the job. The administrative law judge concludes that the employer has sustained its burden of proof that Mr. Smith was sleeping on the job by a preponderance of the evidence in this matter.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that unexcused absenteeism is a form of job misconduct. The Court held that the absenteeism must both be excessive and unexcused and that the concept includes tardiness. The Court held in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) that absences due to matters of "personal responsibility" such as transportation problems or oversleeping are considered unexcused. The administrative law judge concludes based upon the evidence in the record that Mr. Smith had been excessively tardy and had been warned on numerous occasions and suspended for tardiness, but nevertheless continued to report to work late in violation of company policy and the warnings that had been served upon him.

For the above-stated reasons, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated April 22, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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