

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JORDAN C FURMAN
Claimant

APPEAL NO: 19A-UI-01583-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

METAL WORKS INC
Employer

OC: 01/27/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 15, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 20, 2019. The claimant participated in the hearing with Attorney Kerry Self. Katie Techen, Controller; Paul Freeman, Process Manager; and Attorney Steven Kruzel; participated in the hearing on behalf of the employer. Philip Ramstack, CEO Operations, observed the hearing. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance technician for Metal Works from March 27, 2017 to January 29, 2019. He was discharged for attendance.

The claimant worked the 7:00 a.m. to 3:30 p.m. shift. He was tardy October 25 and November 17, 2017, and the employer met with him November 17, 2017, and issued him a verbal warning in writing. It asked the claimant why he was late and the claimant explained he overslept. The employer talked to him about strategies for getting up on time.

On May 17, 2018, the claimant was tardy and the employer called him to ask where he was. The claimant arrived at 8:30 a.m. and said he overslept and the employer reviewed the strategies for getting up on time with him again and issued him a written warning.

On October 10, 2018, the claimant did not arrive for work and the employer tried to call him and called his emergency contact number because it was concerned about him. The claimant arrived after 8:30 a.m. and the employer issued him a final written warning.

On January 3, 2019, the claimant arrived at 7:03 a.m.; on January 18, 2019, he arrived at 7:02 a.m.; and on January 21, 2019, he arrived at 7:03 a.m. The claimant was not aware he was late those three days and the employer did not mention it to him at the time.

On Friday, January 25, 2019, the claimant did not arrive for work and the employer attempted to call him at 8:30 a.m. but did not get an answer. The employer left a voice mail for the claimant indicating it had not heard from him. At 10:09 a.m. the claimant emailed Controller Katie Techen stating he sent "a couple messages" to Process Manager Paul Freeman earlier that morning but did not hear back from him and then received Ms. Baldwin's voice mail (Employer's Exhibit One). He also sent Mr. Freeman a text message at 10:09 a.m. (Employer's Exhibit Three). He told the employer in the email and text at 10:09 a.m. he was ill and would not be at work but stated he did have a doctor's note.

On Monday, January 28, 2019, the claimant properly reported he was absent due to illness and that was considered an excused absence.

On Tuesday, January 29, 2019, the claimant reported for work and the employer met with him and issued a final written warning for the incidents of tardiness January 3, January 18, and January 21, 2019. The employer then questioned the claimant about his absence on January 25, 2019. The claimant said he tried to text Mr. Freeman but it must not have gone through. The employer asked for the claimant to show it the text on his phone and the claimant could not do so. The employer felt the claimant was not being forthcoming about the situation and terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

The claimant had seven incidents of tardiness during his employment with this employer. The first four occurred over the period of time between March 27, 2017 and January 2, 2019, which is nearly a two year time frame. The final three incidents of tardiness took place between January 3 and January 21, 2019, when he was late a total of eight minutes for those three days. With regard to the last three incidents of tardiness, the claimant was unaware he was tardy and the first time the employer mentioned those absences was on January 29, 2019, when it issued him a second final written warning on the day of his termination. The employer did not terminate the claimant for tardiness as it chose to issue him a second written warning instead. Those seven incidents over that period of time do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law.

The other issue is the claimant's absence January 25, 2019. While the claimant stated he texted Mr. Freeman early that morning, the evidence does not support that contention as the text message was not on the claimant's phone when the employer asked to see it when he returned to work January 29, 2019. Consequently, the claimant failed to properly report his absence. That said, however, this was the only time the claimant did not report a full day absence due to illness on time. As such, it is an isolated incident of misconduct and does not constitute disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The February 15, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn