

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JARED WILLIAMS**  
Claimant

**APPEAL NO. 13A-UI-13015-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AJS OF DES MOINES INC**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 21, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 16, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Spencer Cohn. Scott Schwiesow participated in the hearing on behalf of the employer. Exhibits A and One through Six were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from April 4, 2012, to October 25, 2013, in the employer's cleaning business. He received a written warning for absenteeism and tardiness on March 1, 2013, after he was late for work nine times from January 18 to March 1 and was absent due to illness on February 6 and 26 and due to his child's illness on January 18. He was informed that further attendance issues would result in discipline up to termination.

The claimant had talked to his supervisor in March 2013 about adjusting his regular start time from 8 a.m. to 8:30 a.m. because of his child's school schedule. The employer agreed, but the claimant also knew that if he had an appointment at 8:30 a.m., he needed to be at the job by that time.

In his performance appraisal in May 2013 he was informed that he needed to improve his dependability: "Jared still needs to work on punctuality, be early for appointment, not just on time or a little late."

On October 11, the claimant was scheduled to be at his first appointment at 8:30 a.m. He overslept and was an hour late for work. He did not get to the customer's house until 9:57 a.m. The employer was unaware that the claimant was late until the customer called a supervisor at

about 9 a.m. to find out why the claimant was not at work. The claimant was taking a prescribed sleep medication to help him sleep.

On October 21, the claimant was scheduled to be at his first appointment at 8:30 a.m. He clocked in at 8:07 a.m. but arrived at his first appointment at 8:41 a.m. and was late also for his second appointment, which led to a customer complaint.

On October 25, 2013, the employer discharged the claimant for excessive unexcused absenteeism and tardiness.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

On October 11, the claimant was an hour late for work and he was almost 1.5 hours late for his first appointment. The note from the doctor explaining that the claimant was prescribed Ambien to help him sleep and had done so going back to November 2011 does not prove the claimant's late arrival at work was not due to his own fault or was non-volitional. Also, the claimant did not notify the employer about his being late. The record establishes that the claimant was not late arriving at the shop on October 21 but he was late arriving at his appointments for the day, which is what he was warned about in his performance review in May.

The claimant's absenteeism and tardiness was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated November 21, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs