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

JOHN P LARSON
1910 – 260TH ST
IONIA IA 50645

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436 0152

Appeal Number: 04A-UI-10857-DWT
OC: 07/04/04 R: 03
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 are 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:

John P. Larson (claimant) appealed a representative's October 1, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Winnebago Industries (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, a telephone hearing was held on October 28, 2004. The claimant participated in the hearing. Dee Pearce, the human resource supervisor, appeared on the employer's behalf. 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 on May 20, 2002. The claimant worked as a full-time assembler. The employer allows an employee 64 hours of absence during a rolling calendar year before the employer starts its progressive disciplinary policy. Between May 20, 2003, and January 4, the claimant had been absent more than 64 hours for medical reasons. The number of his absences during this time forced the employer to put him on a final written warning and a two-day suspension in January 2004.

The claimant again received a written warning for excessive absenteeism on August 3, 2004. When the claimant was again absent from work on August 26 for a family medical emergency, the employer gave him a two-day suspension for excessive absenteeism on August 27 and 30. The claimant also received a final written warning. The claimant understood that if he missed any more work, he would be discharged.

The claimant had been working first shift at the employer's Forest City location. As of September 6, the claimant transferred to the employer's new plant in Charles City. The claimant was also going to work third shift instead of first shift. On September 3, the claimant met with his previous manager and his new manager. During this meeting, the claimant asked and was told he would report to work at the new Charles City location on Monday night, September 6, at 9:00 p.m. The claimant understood his shift would always begin at 9:00 p.m. and quit a bowling league for work.

The claimant reported to the Charles City location on September 6 about 8:45 p.m. No one was at the facility and it was locked up. The claimant waited until after 9:00 p.m. and left when no one came. The claimant assumed that because it was Labor Day, the employer had decided employees at the Charles City facility would not work. On Tuesday, September 7, the claimant called the Forest City location and left a message with his previous manager. The claimant asked his former manager what was going on because he had reported to work at 9:00 p.m. and no one was at the Charles City location. No one returned the claimant's call on Tuesday. The claimant again reported to work at the Charles City location on September 7 at 8:45 p.m. Again no one was at work. This time the claimant called the employer at 10:00 p.m. on the sick leave line and or attendance line and reported he had been at work but no one was there.

The employer suspended the claimant as of September 6 for again failing to work as scheduled. When the employer learned the claimant thought he was to report to work at 9:00 p.m., the employer wanted to talk to the claimant's new manager about the September 3 discussion. The claimant's new supervisor was out of the country until September 14. The employer received information that the claimant had been told to report to work at 10:00 p.m. at the Charles City location. Based on this information, on September 14 the employer discharged the claimant as the next step in the employer's progressive disciplinary policy for excessive absenteeism.

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 claimant knew his job was in jeopardy in late August 2004 when the employer again gave him a two-day suspension for excessive absenteeism. The real issue in this case is what time the claimant's supervisors told him to report to work at the Charles City plant on September 6. The claimant's testimony is credible and must be given more weight than the employer's reliance on information from two people who did not participate in the hearing. The evidence indicates the claimant's supervisors told him on September 3 that his shift started at 9:00 p.m. at the Charles City location. Although the claimant did not notify the employer the evening of September 6, he made a reasonable assumption that the employer gave employees the night off because of Labor Day. The next day, the claimant called his previous manager, a person he knew, and reported what had happened. Again, the claimant took a responsible and reasonable course of action.

The evidence establishes there was a communication problem between the claimant and the employer. The facts show the claimant understood he was to report to work at the Charles City location at 9:00 p.m. and did. Even though he did not work on September 6 and 7, the claimant did not intentionally fail to work as scheduled. If the employer had returned his call on September 6, the claimant could have reported to work at 10:00 p.m. on September 7.

The employer discharged the claimant for business reasons because the employer concluded the claimant had been told his shift started at 10:00 p.m. not 9:00 p.m. The evidence establishes there was a miscommunication regarding the claimant's starting time. The evidence indicates the claimant did not intentionally fail to report to work as scheduled. Therefore, he did not commit work-connected misconduct. As of September 5, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 1, 2004 decision (reference 02) is reversed. The employer discharged the clamant for reasons that do not amount to work-connected misconduct. As of September 5, 2004, 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