IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIE DAVIS
Claimant

IAC IOWA CITY LLC
Employer

APPEAL NO: 15A-UI-13343-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/24/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 5, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 22, 2015. The claimant participated in the hearing. Mary Turecek, Human Resources Technician, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was 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: A disqualification decision was mailed to the claimant's last-known address of record on June 5, 2015. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 15, 2015. The appeal was not filed until December 1, 2015, which is after the date noticed on the disqualification decision. Because the claimant never received the decision, the administrative law judge must conclude his appeal is timely.

The claimant was employed as a full-time injection operator for IAC Iowa City from August 3, 2012 to May 6, 2015. He was discharged for violating the employer's attendance policy.

The employer uses a no-fault attendance policy. Employees are given 60 hours to use throughout the year on their anniversary date. An incident of tardiness of between one minute and one hour costs the employee one hour; an incident of tardiness of between one hour and one minute and two hours costs the employee two hours; and so forth. A full day absence results in the loss of eight hours. An employee gains four hours for each calendar month he has perfect attendance and earns one hour for every 20 hours of overtime worked. The employer issues a first step written warning when the employee reaches 30 hours; a second step written warning when the employee reaches ten hours; a third step written warning and 12 hours are

returned when an employee reaches zero points. After the final 12 hours are used termination results.

The employer prepared a first step written warning for the claimant December 10, 2012, but his supervisor failed to administer it. The employer still counted that as his first warning, however. He received a second step written warning March 26, 2013, for having eight hours left. He received a third step written warning April 23, 2014, after he reached negative four hours. The employer gave him the additional twelve hours, deducting the four he was in the hole, for a total of eight hours remaining. The claimant received a first, fourth step warning March 18, 2015, after he hit negative three hours. He had earned four overtime hours, however, so he was left with one hour at that time.

The claimant took May 4 and 5, 2015, as vacation days as he believed he had two vacation days of his five left. His supervisor signed off on his request for vacation for those two days, but the employer determined the claimant had already used his vacation and was not entitled to anymore. Consequently, because that took the claimant below zero hours and he did not have enough overtime hours to pull him out of the hole, the employer terminated his employment May 7, 2015.

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 § 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).

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 employer's witness did not know how the claimant's hours were accumulated or deducted until his final absences of May 4 and May 5, 2015, when he requested and was granted vacation by his supervisor. Consequently, there is no method by which to make a determination of whether those hours were due to properly reported illness and cannot be considered as an unexcused absence for the purposes of unemployment benefits. Neither the claimant nor his supervisor were aware he did not have any further vacation available at that time and the claimant was subsequently rehired following the second step grievance procedure because his vacation was approved by his supervisor. While the claimant is responsible for knowing his hour total, it can be confusing as the employer only publishes the totals in January and July. The claimant reasonably believed that his supervisor could tell him if he had vacation left to take or, if he did not know, would tell him to check with human resources. Instead, his supervisor simply approved his time off. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 5, 2015, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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