

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELMAR ALLEN
Claimant

APPEAL NO: 07A-UI-01653-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

**OC: 01-21-07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 9, 2007, 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 March 5, 2007. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 level I for Exide Technologies from December 20, 2005 to January 22, 2007. He was discharged for exceeding the allowed 10 attendance points. The claimant's parents lived with him and he occasionally had to take them to doctor's appointments in Iowa City or Lacrosse, Wisconsin. He called in to report each absence and was warned upon receiving nine points in mid-December 2006. He was not eligible for FMLA at the time because he had not yet worked there one year. The claimant called in vacation days January 15 and January 16, 2007. He worked his next three scheduled work days on January 19, 20 and 21, 2007, but forgot to turn in his written vacation paperwork January 22, 2007, the next scheduled work day for the office personnel. On January 22, 2007, the claimant's lead man called and told him the employer was terminating his employment because he forgot to turn in his vacation paperwork before leaving for the day January 21, 2007. The claimant offered to drive the paperwork back into the office but was told it would not make any difference because he had not submitted the paperwork by 6:00 a.m. even though the handbook does not say the papers must be turned in by a certain time on the office's next scheduled work day which was January 22, 2007.

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:

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.

871 IAC 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.

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). When an employee is discharged the employer has the burden of proving disqualifying job misconduct. Consequently it is imperative that the employer participate and provide evidence of misconduct. In this case, the claimant was discharged for failing to turn in his vacation sheet January 22, 2007, by 6:00 a.m. even though the handbook states the form must just be turned in on the following business day. Because the claimant worked the weekend of January 19, 20 and 21, 2007, the next workday was January 22, 2007, and when he was notified he had not turned in his paperwork he offered to bring it in around 10:00 a.m. but was told it was too late. Under these circumstances, the administrative law judge cannot conclude that the claimant's actions rise to

the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 9, 2007, reference 01, decision is reversed. 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/pjs