

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHILIPPE E LOLAGNE
Claimant

BIOLIFE PLASMA LLC
Employer

APPEAL 18A-UI-10812-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/14/18
Claimant: Appellant (2)

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Philippe Lolagne, Claimant, filed an appeal from the October 30, 2018 (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with Biolife Plasma LLC, due to repeated tardiness in reporting to work after being warned. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2018 at 9:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a Plasma Center Technician from August 11, 2015 until his employment with Biolife Plasma LLC ended on October 9, 2018, when claimant was discharged for excessive tardiness. Claimant's last incident of tardiness was for returning to work late from his lunch break. The date and duration of this last incident of tardiness is unknown. The reason claimant was tardy was because he was on a telephone call to arrange a leave of absence from employment. Claimant had a prior warning for excessive tardiness in June or July 2018.

Employer has an attendance policy that addresses tardiness. The policy is found in the employee handbook. Claimant had access to a copy of the employee handbook. The employer's attendance policy is point-based. Claimant believed he had not accrued enough points to result in termination of his employment and, therefore, did not know that his job was in jeopardy. Other employees exceeded the number of points for tardiness but were not discharged by employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) *Excessive unexcused absenteeism*. 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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982).

Because the date of the last incident of tardiness is unknown, employer has not met its burden of proving claimant's termination was based on a current act of misconduct. Therefore, claimant was discharged for no disqualifying reason. Benefits are allowed.

DECISION:

The October 30, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are allowed, provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn