

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUCAS J JONES**  
Claimant

**APPEAL NO. 11A-UI-07171-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SERVICES USA**  
Employer

**OC: 07/18/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated May 27, 2011, reference 04, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on June 22, 2011. Claimant participated personally. The employer participated by Mr. David Williams, Hearing Representative, and witness, Mr. Brian Chatham, Human Resource Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Lucas Jones was employed by Securitas Security Services USA, Inc. from February 23, 2011 until May 6, 2011 when he was discharged for excessive absenteeism. Mr. Jones was employed as a full-time security officer and was paid by the hour. The claimant was assigned to work at the Wellmark facility.

Mr. Jones was discharged after he exceeded the permissible number of attendance infractions allowed under established company policy. Under company policy employees are subject to discharge if they accumulate four and a half attendance infraction points within a three-month period. Mr. Jones was aware of the policy and had been warned.

The claimant had received a warning on March 29, 2011 for attendance violations and had received a final warning after he had failed to report for work on April 14 and 15, 2011. The claimant was assessed absent points for each of those days as he had failed to provide notice as required.

Mr. Jones was discharged after he called off work after his absence on May 5 and called off work on May 6, 2011. On that date the claimant had gone to visit his grandfather who was hospitalized and failed to report for work due to car trouble en route to work.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

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 proof in this matter. See Iowa Code § 96.6(2).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absence must both be excessive and unexcused. In the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984), the Court held that absence due to matters of "personal responsibility" such as transportation problems are considered unexcused.

The administrative law judge concludes based upon the evidence in the record that Mr. Jones was aware of the company attendance policy and had been adequately warned prior to his termination. The claimant was discharged when he called off work absent on May 6, 2011 due

to transportation problems. Claimant had received a final warning and was aware that his employment was in jeopardy. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated May 27, 2011, reference 04, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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