

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN P MINOR
Claimant

APPEAL NO: 14A-UI-08790-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JANCO INDUSTRIES INC
Employer

OC: 08/03/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 21, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons.

After several pre-hearing conferences regarding the claimant's request for documents, a hearing was held on October 23, 2014. The claimant participated at the hearing. Sarah Franklin, the employer's attorney, represented the employer. Dana McFarland and Ryan McFarland appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four and Claimant Exhibits A through C were offered and admitted as evidence. Claimant Exhibit D was offered, but ruling was reserved on the admissibility of this document.

After carefully reading Exhibit D, this document is not admitted as evidence. This is correspondence from the employer to Sarah Franklin. The correspondence addresses the claimant's request for documents which was resolved at a pre-hearing conference. Exhibit D does not address the reasons for the claimant's employment separation and is not admitted because it is not relevant.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2004. The claimant worked as a full-time welder. The employer allows employees five personal days during the year. After five personal days, the employer can start a disciplinary process. The employer's attendance policy informs employees that if they are going to be late or absent they must notify the employer 30 minutes before a scheduled shift. When an employee properly notifies the employer he will be late, the employer does not count this late start time against the employee.

During the claimant's employment, he had been absent more than five times during a calendar year. Prior to 2014, the employer talked to the claimant about reporting to work as scheduled, but did not document any verbal warnings when he reported to work late. (Claimant Exhibit A.)

In 2014, the employer decided to crack down on attendance issues because as a job shop if one employee is late or absent without notification, work is delayed. This means orders can be late and customers can become upset. The claimant was not the only employee who was absent or late for work. (Claimant Exhibit B.)

On March 11, 2014, the claimant inadvertently overslept and was 25 minutes late for work. Since he lives about five blocks from work, when he woke up he did not take time to call the employer but hurried to work as quickly as possible. Since the claimant was significantly late for work, 25 minutes, he received his first written warning. The employer warned him that if he was late again, he would be disciplined. (Employer Exhibit Two.) The employer told him to make sure he reported to work on time.

On June 27, when the claimant did not report to work, his supervisor called him. The claimant had again overslept and he was 49 minutes late for work. On June 30, the employer gave the claimant his second written warning for attendance issues. (Employer Exhibit Three.) Even though the claimant could have also been suspended for three days, the employer did not suspend him. After the claimant received his second written warning, he understood that if he was late again for work he would be discharged.

Since the claimant understood his job was in jeopardy, he took steps to make sure he did not oversleep again. He set three alarms, set his phone and also put his television on wake up. The claimant lives alone. On July 28, he overslept. As a result of oversleeping, he was 16 minutes late for work. When the claimant reported to work, the employer asked him if he knew what time he was scheduled to work and if he was late for work. After the claimant responded yes to each question, the employer discharged him for on-going attendance issues. (Employer Exhibit Four.)

After the employer started strictly enforcing the attendance policy in 2014, the claimant has not been the only employee discharged for attendance issues. Before the claimant received his first written warning on March 11, he had been absent from work more than five days since January 1, 2014. (Claimant Exhibit A.) In 2014, the claimant usually reported to work on time with the exception of the three days he overslept. (Claimant Exhibit B.) The claimant does know why he may have overslept, but Claimant Exhibit B indicates he was off work July 21 through 26. July 28 was the first day he was scheduled to work after some time off from work.

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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

In accordance with the employer's attendance policy, the employer started giving the claimant written warnings after he was absent more than five days since January 1, 2014. Each time the claimant was significantly late on March 11, June 27 and July 28, he overslept and was more

than 15 minutes late for work. After the claimant received his second written warning on June 27 he understood his job was in jeopardy and took steps so he would not again oversleep. Even though the claimant set multiple alarm clocks, he overslept on July 28 after he had been off work for about week. The claimant did not know why he overslept that day. While it is unfortunate, but as a result of the claimant's repeated oversleeping after he had been warned about his attendance, the employer discharged him for reasons that amount to work-connected misconduct.

Even though the employer had not strictly enforced its attendance policy before 2014, the employer put the claimant on notice when he received his first written warning, that if he continued to report to work late without notice, he would be discharged. While other employees were late, it is not known if they had properly advised the employer they would be late or where they were at in the disciplinary process. Since the employer discharged at least two other employees for attendance issues, the facts do not support the claimant's assertion that employer singled him out or treated him unfairly.

DECISION:

The representative's August 21, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that amount to work-connected misconduct. As of August 3, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs