

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAWN M SIMPSON
Claimant

APPEAL NO. 14A-UI-09184-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

OC: 08/10/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 28, 2014, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 10, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Jerry Sander participated in the hearing on behalf of the employer with a witness, Trisha Taylor.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as an assembler from August 2, 2012, to August 12, 2014. His shift was from 7:00 a.m. to 3:30 p.m.

The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they accumulated ten attendance points. Points are given for unscheduled absence and tardiness. For an absence or tardy of over four hours, one point is given. For a tardy of 31 minutes to four hours, one-half point is given. For a tardy of one minute to 30 minutes, one-fourth point was given. Employees get one point deducted from their total for three months without an unexcused absence. A point is not given for an absence if an employee provides a doctor's excuse, but employees are only allowed three doctor's excuses per year. Employees receive warning at four, six, and eight points and termination at ten points.

The claimant received the following points in 2013 and 2014

Date	Points Given	Reason for Points	Discipline
January 17, 2013	1 point	Left work more than 4 hours	
May 13, 2013	1 point	Sick	
May 18, 2013	½ point	Left work less than 4 hours	
June 3, 2013	½ point	Left work less than 4 hours	

June 17, 2013	½ point	Left work less than 4 hours	
June 18, 2013	1 point	Sick	1st Warning 4.5 points
June 26, 2013	1 point	Sick	
July 13, 2013	½ point	Left work less than 4 hours	
July 16, 2013	1 point	Sick	2nd Warning 6 points
September 20, 2013	1 point	Sick	
November 5, 2013	½ point	Left work less than 4 hours	
February 10, 2014	1 point	Sick	
March 5, 2014	½ point	Left work less than 4 hours	
June 9, 2014	1 point	Sick	3rd Warning 8 points
June 18, 2014	¼ point	Late for 1 to 30 minutes	
June 19, 2014	½ point	Late for 31 minutes to 4 hours	
July 30, 2014	1 point	Left work more than 4 hours	
August 7, 2014	¼ point	Late for 1 to 30 minutes	Termination 10 points

The claimant left work by ambulance on July 29 due to breathing problems. He was not given a point because he had a doctor's excuse, even though he had three prior doctor's excuses, because he left work by ambulance. The claimant again left work for more than four hours on July 30 for medical reasons due to a reaction to the medication prescribed the day before. He spoke to a human resources representative before leaving work and was told that if he got another doctor's note, he would be covered for both days. The claimant provided a doctor's excuse, but he received a point anyway.

On August 7, the claimant arrived at work on time at 7:00 a.m. and swiped his card to punch in. He did not realize until his supervisor informed him, that the card was not accepted. He punched in and the supervisor would not agree to back the time up to 7:00 a.m.

As a result of the late punch in, the claimant was considered late and at ten points. The employer discharged the claimant for that reason on August 12.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he was told that he would not get a point for missing work on July 30 and was not late on August 7. No work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 28, 2014, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs