

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JARED KINCHELOE
Claimant

APPEAL NO: 12A-UI-14144-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 11-04-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 28, 2012, 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 December 20, 2012. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing 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 coverage review representative for Apac Customer Services from November 14, 2011 to November 2, 2012. He was discharged for exceeding the allowed number of attendance points. The employer's policy allows employees eight points before termination will occur. The claimant was at negative 26 points at the time of termination.

In August the employer instructed the claimant it needed him to work at home and the claimant began doing so. He had approximately negative 12 or 13 points at that time and had not received a warning regarding his attendance since June 2012. His hours were from 8:00 a.m. to 4:30 p.m. If the claimant was not completely logged on his computer by 8:00 a.m. his computer would automatically issue him one-half of an attendance point even though he always contacted his supervisor to explain he usually had difficulty logging on to the employer's remote entry system and consequently was assessed an attendance point. The claimant went into his office prior to 8:00 a.m. but still could not always get on the remote entry system by 8:00 a.m. and continued to receive points. Most if not all of the claimant's points after he moved home were due to problems logging on his computer from home.

The claimant had received three written attendance warnings prior to moving home but even though he had a negative point total prior to moving home, he was not disciplined and did not

believe his points were an issue for the employer as it did not mention his negative point total after June 2012 and he accumulated at least 13 or 14 points after he started working from home. He was not aware his job was in jeopardy but on November 2, 2012, the employer notified the claimant his employment was terminated due to his attendance.

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). While the claimant did violate the employer's attendance policy, he had been out of compliance, with a negative point total, for several months without any disciplinary action leading him to believe the employer did not place a premium on attendance. Additionally, and more importantly, most, if not all, of the claimant's attendance points accumulated after he moved home were due to problems with the

employer's equipment and the claimant reported those issues to his supervisor but the employer failed to take any steps to correct the problems and he continued to be assessed attendance points for tardiness. It appears the claimant's termination was almost random given the fact he had negative attendance points for several months without any disciplinary action.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The November 28, 2012, 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/css