

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JIMMY L PURDY  
201 E LOCUST ST  
DAVENPORT IA 52803

INTERSTATE BRANDS CORP  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-03451-DWT  
OC: 02/20/05 R: 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jimmy L. Purdy (claimant) appealed a representative's March 22, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Interstate Brands Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2005. The claimant participated in the hearing with his witness, Tom Waulk, a union representative. Kelly Green, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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



#### FINDINGS OF FACT:

The claimant started working for the employer on September 18, 2003. The claimant worked as a production worker. The employer has a no-fault attendance policy. The claimant understood an employee would be discharged if an employee were late for work six times in a six-month period.

The claimant was late for work two times in December 2004. On January 11, 2005, the claimant had car problems and was late for work. When the claimant reported to work late on January 11, this was the fifth time he had been late for work within a six-month period. The claimant, however, did not know how many times he had been late for work.

The claimant was off work on January 15, 16 and 17. When he came back to work on January 19, 2005, no one said anything to him about being late on January 11 or that he had five tardies. On February 6, the claimant notified the employer he would be late for work. The claimant washed his uniforms before he went to sleep and forgot to put his uniforms in the dryer. On February 9, 2005, the employer asked the claimant to sign a written warning. When the claimant signed the February 9 warning, he understood it related to reporting to work late on February 6. Instead, the February 9 warning informed the claimant that as of January 11, he had accumulated five tardies and could not be late for work until April 30, 2005.

The claimant did not realize until February 14 when the employer told him he was discharged that he received notice he had five tardies after he had been late for work six times in a six-month period. Even though the employer's human resource policy normally disregards an incident if an employee has not received notice of the violation incident within two weeks, the employer did not disregard the January 11, 2005 incident. The employer discharged the claimant on February 14 and confirmed his employment termination on March 1, 2005.

#### 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).



The claimant violated the employer's attendance policy by being late for work six times within a six-month period. The employer established compelling business reasons for discharging the claimant. The employer, however, failed to timely advise the claimant that his job was in jeopardy. For unknown reasons the employer did not notify the claimant until February 9 that his job was in jeopardy as of January 11. Unfortunately, the claimant had been late for work on February 6, which was before the employer gave the claimant the February 9 warning. Under this factual scenario, the employer failed to put the claimant on notice that his job was in jeopardy. As a result, the evidence does not establish that the claimant intentionally failed to work as scheduled. The claimant did not commit work-connected misconduct. As of February 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's March 22, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 20, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs