

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIE HUGHES
Claimant

APPEAL NO. 13A-UI-13492-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

**OC: 11/03/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 6, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on January 2, 2014. The claimant participated personally. The employer participated by Sarah Horan, corporate human resources representative, and Bill Pennington, training coordinator. The record consists of the testimony of Sarah Horan; the testimony of Bill Pennington; the testimony of Willie Hughes; and Employer's Exhibits 1-15.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a steel service company that fabricates steel. The claimant was hired on September 4, 2012, as a shop helper. He was a full time employee. His last day of work was October 25, 2013. He was terminated on October 28, 2013, for violating the employer's attendance policy.

The claimant's attendance policy showed the following:

October 28, 2013	Absent No Call/No Show	In Jail
October 11, 2013	Left Early	—Mother called about Father
August 23, 2013	Absent	—Arrested for Driving without a License
April 26, 2013	Left Early	—Problem with Tooth

The employer has a written attendance policy, of which the claimant was aware, that the accumulation of ten points would lead to termination. The claimant was given a verbal warning; a written warning; and a suspension for his attendance problem.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant's attendance record shows excessive unexcused absenteeism. Two of the claimant's absences, including the final absence, were due to claimant being arrested and put into jail. The claimant did not feel that he was responsible for the final absence because he was not allowed to call the employer. He clearly was responsible for being arrested and for the earlier ticket of driving

without a license. Although the violation of the employer's attendance policies is not sufficient to show misconduct, clearly the claimant was absent on enough occasions to warrant his termination on that policy. Two and possibly three of the final absences were due to personal reasons and are considered unexcused under Iowa policy. The administrative law judge concludes that there is sufficient evidence to show misconduct. Benefits are denied.

DECISION:

The decision of the representative dated December 6, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs