

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

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DES MOINES IA 50317-6250

DES MOINES INDEPENDENT COMMUNITY
SCHOOL DISTRICT
c/o BUSINESS/FINANCE
1801 – 16TH ST
DES MOINES IA 50314-1902

NUNC PRO TUNC

Appeal Number: 04A-UI-06760-E
OC: 06-08-04 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 8, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on July 28, 2004. The claimant participated in the hearing. Kathy McKay, Risk Manager, and Doug Willyard, Deputy Director of Human Resources and Labor Relations, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

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 chief building custodian for the Des Moines Community

School District from January 19, 1987 to May 21, 2004. He was tardy September 16, 2003; October 21, 2003; November 14, 2003; December 8, 2003; January 6, 2004; January 29, 2004; March 3, 2004; and March 8, 2004. On March 19, 2004, the claimant received a written warning for tardiness. On April 27, 2004, the employer called and woke the claimant up at 6:26 a.m. and on April 28, 2004, the employer met with the claimant and imposed a three-day suspension. The employer stressed the importance being on time because the claimant was responsible for opening the building. On May 18, 2004, the claimant overslept and arrived for work at 6:45 a.m. and the employer terminated his employment May 21, 2004. The claimant was tested at a sleep disorder clinic on June 6, 2004 and was diagnosed with sleep apnea (Claimant's Exhibit A).

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, (7) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. 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.

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Excessive unexcused absenteeism, which includes tardiness, is misconduct. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant worked for the employer for 17 years without any evidence of attendance problems prior to his last eight months of employment. His absences during this time were due to oversleeping, which would typically be considered unexcused. In this case, however, the claimant was diagnosed with a sleep disorder shortly after his discharge, which suggests, more likely than not, that his tardiness was non-volitional. While the employer may have been justified in discharging the claimant, his actions were not deliberate, intentional, or culpable, which is required before disqualification results. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). Consequently, the administrative law judge concludes the claimant's actions do not constitute disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The June 8, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b/tjc