

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMEKA T WHITE
Claimant

APPEAL NO: 11A-UI-08454-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

**OC: 05/29/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Emeka T. White (claimant) appealed a representative's June 21, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Iowa Pacific Processors (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2011. The claimant participated in the hearing. Todd Smith appeared on the employer's behalf and presented testimony from one other witness, John Lenke. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 31, 2011. He worked full time in the employer's small meat packing, further processing, and boxed beef business. His last day of work was May 31, 2011. The employer discharged him on that date. The reason asserted for the discharge was his attendance and job performance.

The claimant had originally worked in the employer's packaging department with a 6:00 a.m. start time. As of April 21 the claimant had three tardies, and was given his first written warning. As a further consequence, he was moved to the in feed department; the start time for that department was 5:50 a.m.

On May 11, 2011 the employer gave the claimant a second written warning, this time for unsatisfactory job performance. The employer advised the claimant that given his short period of employment with the employer, his job was in jeopardy if there were further problems in the near future.

After April 21 the claimant had been given two verbal warnings regarding additional tardies and his need to be at work by 5:50 a.m. In the four days prior to May 27 the claimant had been

consistently reporting for work between 5:44 and 5:48 a.m. However, on May 27 he did not clock in until 5:55 a.m. As a result of this additional tardy after the prior warnings, the employer discharged the claimant on May 31

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absences can constitute misconduct. 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). In order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of his job. Cosper, supra; Higgins, supra. The claimant's final tardy was not excused and was not shown to be due to illness or other reasonable grounds. The claimant had previously been warned that future tardies could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 21, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 31, 2011. This disqualification continues until he

has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css