IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVEN STANDRIDGE
Claimant

THE PRINTER INC
Employer

APPEAL NO: 12A-UI-06141-E

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04-15-12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 9, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, July 30, 2012, and continued by telephone conference call August 8, 2012, before Administrative Law Judge Julie Elder. The claimant participated in the hearing with Attorney Karmen Anderson. John Harris, Second Shift Plant Manager and Janet Stice, Senior Manager of Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

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 bindery operator for The Printer from January 18, 2010 to February 28, 2012. On September 7, 2010, the claimant was instructed not to read while at the cutter. On October 13, 2010, the claimant received a documented verbal warning for reading a book while at the cutter waiting for the operator to fix the machine (Employer's Exhibit One). When the operator was ready to start again he had to stop because the claimant was removing a jam at the tabber (Employer's Exhibit One). Had he been paying attention rather than reading he would have noticed the jam earlier and would not have caused further delay in production (Employer's Exhibit One). The documented verbal warning also stated the claimant was taking a lunch, which second and third shift normally did not do, but not staying until 11:30 p.m. to work a full shift (Employer's Exhibit One). On June 23, 2011, the claimant received a written warning because he was scheduled to work mandatory overtime Sunday, June 19, 2011, at 8:00 a.m. but did not arrive until 12:00 p.m. (Employer's Exhibit Two). Because of the claimant's tardiness the employer was not able to complete the job as planned (Employer's Exhibit Two). On September 11, 2011, the claimant clocked in at 11:01 a.m. for his 8:00 a.m. shift. On September 12, 2011, the employer issued the claimant a written warning/final reprimand (Employer's Exhibit Three). The employer warned the claimant about seven specific items including that the claimant no longer take a lunch break because he was not working until

11:30 p.m. as required if he took a lunch period; told him he was not being considered for a raise because of his work behavior, excessive tardiness and excessive missed punches (he was told that no other employee had as many missed punches as he did); warned him he could not bring a knife longer than 4.99 inches to work; was told if he came to work late he could not stay late to make up his time; was told that he must work 40 hours per week or he could lose his benefits; was reminded he could not read for pleasure during work hours; and was instructed that riding on the pallet jack and "other childish behavior are safety violations and would not be tolerated" and that if it happened again it would result in immediate termination of employment (Employer's Exhibit Three). Between January 11, 2011 and February 28, 2012, the claimant accumulated 16 incidents of tardiness before the June 23, 2011, written warning; 11 incidents of tardiness between the June 23, 2011, written warning and September 12, 2011, final written warning; and 41 incidents of tardiness between the September 12, 2011, final written warning and the February 28, 2012, termination date (Employer's Exhibit Four). On Saturday, February 25, 2012, the employer was working mandatory overtime. The claimant was scheduled to work at 8:00 a.m. and arrived at 8:24 a.m. without calling to notify the employer he would be late. On Sunday, February 26, 2012, the claimant was scheduled to work at 8:00 a.m. and arrived at 9:29 a.m. again without calling to tell the employer he would be late. When the claimant was late other employees had to wait to begin production or the employer had to shut a machine down. On February 28, 2012, the employer terminated the claimant's employment for excessive tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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(7) provides:

> (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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant accumulated 41 incidents of tardiness between his final written warning September 12, 2011 and his termination date of February 28, 2012. The employer has established that the claimant

was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The May 9, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs