

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D FARRELL
Claimant

APPEAL NO. 11A-UI-11100-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEST BUY STORES LP
Employer

**OC: 07/24/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 16, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 15, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Kuiper participated in the hearing on behalf of the employer with a witness, Christopher Peterson.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an asset protection specialist from January 3, 2005, to June 8, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant was repeatedly late for work and was warned about this in April 2010 and September 2010. He received a written warning on January 31, 2011, for being 23 minutes late for work on January 20. He received a final written warning on March 27, 2011, for being over an hour late for work on March 19.

The claimant was scheduled to work at 3 p.m. on June 6. He reported a half hour late for work because he thought he was scheduled for work at 4 p.m. The employer discharged the claimant on June 8, 2011, for excessive tardiness despite being warned.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the

contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 law recognizes tardiness as absenteeism.

The claimant was repeatedly late for work, despite several warnings. His final tardy was not due to illness or other reasonable grounds. He did not call the employer to notify the employer that he was going to be late. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 16, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw