

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT L POOL**  
Claimant

**APPEAL NO. 06A-UI-09935-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF CORRECTIONS/FT MADISON**  
Employer

**OC: 11/06/05 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Iowa Department of Corrections/Fort Madison (employer) appealed a representative's October 2, 2006 decision (reference 05) that concluded Scott L. Pool (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Nancy Beals of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Phyllis Porter and Bill Sperfslage. One other witness, Deb Nichols, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the employer, 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 February 21, 1998. He worked full time as a correctional officer at the employer's Fort Madison, Iowa, correctional facility. His schedule was Monday through Friday, 5:45 a.m. to 1:45 p.m. There was a separation from employment on October 24, 2005, which was separately adjudicated in a representative's decision issued on December 1, 2005 (reference 01), with a determination that the separation was disqualifying.

Subsequently as the resolution of a grievance proceeding, an agreement was made under which the claimant was reinstated effective July 28, 2006, and he returned to work as of that date. The agreement for the claimant's reinstatement included a provision that he was under a "last chance" condition for 18 months; all prior disciplinary measures would remain in his file, and any further violation would result in immediate termination even if termination would not otherwise have been the next step in the disciplinary process.

Prior to the October 25, 2005 separation, the claimant had incurred several disciplines for attendance, most recently a five-day suspension for late call-ins of absences. The next normal step for additional attendance violations would have been a ten-day suspension. On August 2, 2006, the claimant was four minutes late for the start of his shift. The employer investigated the incident on August 3; the claimant asserted that the reason for the tardy was that he had run into road construction, as he was commuting nearly two hours from an Illinois address different from the Fort Madison address he had provided to the employer. After a meeting with the claimant and the union on August 4, the employer discharged the claimant for the unexcused tardy on the third workday after returning under the last-chance agreement.

The claimant established a claim for unemployment insurance benefits effective November 6, 2005. The claimant has received no unemployment insurance benefits since the separation from employment.

### **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.

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.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

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). The presumption is that transportation issues are generally within an employee’s control. Higgins, supra. The claimant's tardy, particularly so soon after returning to work under the last-chance agreement, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's October 2, 2006 decision (reference 05) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 4, 2006. This disqualification continues until the claimant 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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