IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW P COMEGYS
Claimant

JACOBSON STAFFING COMPANY LC
Employer

APPEAL NO: 10A-UI-17354-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/21/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Andrew P. Comegys (claimant) appealed a representative's December 16, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Jacobson Staffing Company, L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2011. The claimant participated in the hearing. Liz Jerome appeared on the employer's behalf. 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 September 22, 2008. He worked full time as a mechanic at the employer's Des Moines, Iowa tire distribution business client, working on a 6:30 a.m. to 3:00 p.m. schedule. His last day of work was November 23, 2010. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a six-point attendance policy. From December 1, 2009 through May 6, 2010, the claimant was given three points due to three days of absence, and received a three-point warning. One of those absences was specifically noted as due to properly reported illness, and the administrative law judge assumes without evidence to the contrary that the other two were also due to properly reported illness.

The claimant was then a no-call/no-show for scheduled overtime on June 26, for which he was given two points, bringing him to five points, for which he received a two-day suspension. His explanation for this absence was that he had believed the overtime was voluntary. However, the claimant had been working scheduled overtime frequently prior to this absence, and had not been told it was voluntary.

On July 30 the claimant was nearly two hours late without explanation. For this he was given another half point, bringing him to 5.5 points; he could not have any other occurrence until after November 30, 2010.

On November 23 the claimant was about a half hour late for work. He asserted this was because his electricity had gone off overnight, and that as a result his alarm did not go off. For this occurrence he incurred an additional half point, bringing him to six points. As a result, the employer discharged the claimant.

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).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 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). The presumption is that oversleeping is generally within an employee's control. Higgins, supra. The claimant had previously been warned that future occurrences could result in termination. He knew that he was within a half point of discharge, but did not take reasonable precautions within his control to seek to prevent the potential of an additional tardiness, such as a backup alarm, perhaps battery powered. The claimant's final tardy was not. Half of his attendance points were for unexcused reasons, which in the facts of this case the administrative law judge accepts as being excessive. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's December 16, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 23, 2010. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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