

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L HARTWICK
Claimant

APPEAL NO. 13A-UI-09557-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 07/21/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 15, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged for excessive, unexcused absenteeism and tardiness after being warned. After due notice was provided, a telephone hearing was held on September 24, 2013. Claimant participated. The employer participated by Ms. Denice Norman, Hearing Representative, and witnesses: Ms. Kortney Fox, Human Resource Generalist, and Mr. Jake Skidmore, Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Robert Hartwick was most recently employed by The Hon Company from June 7, 2004 until July 26, 2013 when he was discharged for violating the company's excessive attendance and punctuality policy. Mr. Hartwick was employed as a full-time welder working the company's first shift and was paid by the hour. His immediate supervisor was Jake Skidmore.

Mr. Hartwick was discharged when he exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Under the policy employees are charged partial or full occurrence points for tardiness or absences and infraction points roll off after 12 months. Employees are expected to keep track of their own attendance infraction points although the matter is reviewed with employees by their supervisors and the employees initial the points as they are being assessed due to attendance violations.

Mr. Hartwick received a final warning from the company regarding his attendance and punctuality on February 15, 2013. After that date the claimant was tardy on April 9, absent with no reason on April 19, tardy on May 14, received one attendance infraction point for illness on May 21 and 22, called in sick on July 2 and July 11, 2013. Claimant was absent due to illness on July 12. Mr. Hartwick had one-half of one point remaining on his absence on July 12 and

exceeded the permissible number of attendance infractions when he reported one and one-half hours late on July 26, 2013 due to oversleeping.

Mr. Hartwick had not calculated his attendance point violations correctly and also believed that he would be allowed one more attendance infraction after reaching a "zero point level." Under current company policy employees are subject to discharge when they reach zero points. All company employees were notified of that policy and the policy was posted within the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged under disqualifying conditions. It does.

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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

No aspect for the contract of employment is more basic than the right of the employer to expect employees will appear for work on the hour and day agreed upon and recurrent failure to honor that obligation shows a substantial disregard for the employer's interest and thus may justify a finding of misconduct in connection with the employment.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. In the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984), the Supreme Court of the State of Iowa held that absence due to matters of "personal responsibility" such as transportation problems or oversleeping are considered unexcused.

Inasmuch as the evidence in the record establishes that the claimant was aware of the company's attendance policy and had been adequately warned that his attendance was jeopardizing his employment, the administrative law judge concludes that the employer has sustained its burden of proof establishing the claimant's discharge took place under disqualifying conditions. Claimant's final attendance infraction was not an excusable reason. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated August 15, 2013, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs