

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ORRINGTON S GARDNER  
902 WELLINGTON ST  
WATERLOO IA 50702

EAGLE OTTAWA LLC  
4455 REMINGTON RD  
WATERLOO IA 50703

BOB RUSH  
ATTORNEY AT LAW  
PO BOX 637  
CEDAR RAPIDS IA 52406

Appeal Number: 05A-UI-11405-SWT  
OC: 12/26/04 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 3, 2005, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 9, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Bob Rush, attorney at law. Kathryn Nuss participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a utility worker from September 23, 2002, to October 18, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received seven attendance points in a

twelve-month period. Points are given for unapproved absence and tardiness as follows: tardiness of more than two hours or absence (one point) and tardy of less than two hours or failure to punch the time clock (one half point).

On January 12, 2005, the claimant received a verbal warning because he was tardy on January 6, which put him at four points. On May 10, 2005, he received a written warning because he was absent on May 3, which put him at 5.5 points. On October 11, 2005, the claimant received a final warning because he was tardy on October 6, which put him at six points. On October 14, 2005, the claimant received a second final warning because he was tardy on October 11, which put him at 6.5 points.

The claimant had sustained a work-related injury to his shoulder in July 2005. He was scheduled to undergo surgery for this injury on October 15. His tardiness on October 6 and 11 was because he was experiencing pain in his shoulder in the morning. He called when he was absent from work. On October 14, the claimant left work early with his supervisor's permission because he had surgery the next day. The claimant punched out on the time clock but for some reason the time system did not record his punching out. Consequently, the employer assessed the claimant one-half point, and discharged the claimant under its attendance policy because he was at seven points.

#### 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful or substantial misconduct has been proven in this case. The claimant's final instances of tardiness were for legitimate reasons and were properly reported. The claimant testified credibly that he had punched out when he left work on October 14, 2005.

DECISION:

The unemployment insurance decision dated November 3, 2005, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs