

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAURUS TRAVIS
Claimant

APPEAL NO: 13A-UI-03002-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 01-06-13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 28, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2013. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on February 28, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 10, 2013. That date fell on a Sunday so the appeal was actually due March 11, 2013. The appeal was not filed until March 13, 2013, which is after the date noticed on the disqualification decision. The decision was delivered to another occupant of the claimant's apartment building and that neighbor did not bring the decision letter to the claimant until March 12, 2013. The claimant filed the appeal the following day. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time machine operator/line leader for Dee Zee Inc. from June 21, 2012 to January 4, 2013. The week prior to his discharge, the claimant was walking behind Supervisor Verne as he backed up a forklift. The claimant tried to get Verne's attention by saying, "Hey. Hey," because Verne was backing up quickly and the claimant wanted to be sure he knew he was behind him. Verne stated the claimant should have been on the other

side of the line but that was the walkway all employees used in going to and returning from breaks and lunches. Verne was angry and stated he was going to the claimant's supervisor, Earl, and the claimant said he was going to talk to Earl. The claimant told Earl what happened and he told him not to worry about that incident but to be careful because Verne was notorious for trying to get employees discharged.

The employer allows employees to accumulate 25 attendance points before termination results. The claimant had 39 points at the time of termination but had been over the allowed 25 points for at least one month prior to his termination. He had to take the bus and then walk to his plant and would occasionally be about five minutes late. He always called Earl to let him know he would be a few minutes late. He had not received any written or verbal warnings about his attendance during his tenure with the employer.

On January 4, 2013, Earl met with the claimant and told him his employment was terminated due to exceeding the allowed number of attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. 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 claimant exceeded the allowed number of attendance points, he had not received any verbal or written warnings about his attendance and had been over the point limit for at least one month prior to his termination. He had a run-in with Supervisor Verne the week before his termination and that appears to be the triggering event regarding his discharge, rather than his attendance. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The February 28, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs