

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE R TETER**  
Claimant

**APPEAL NO. 12A-UI-14704-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEST HEATING & AIR CONDITIONING**  
Employer

**OC: 07/22/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 28, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 17, 2013. Claimant participated. The employer participated by Mr. Steve Kapaun, Company President.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Shane Teter began employment with Harvest Heating & Air Conditioning in November 2011. Mr. Teter was assigned to work as a full-time underground drill operator/general worker and was paid by the hour. Claimant's expected work times were 8:00 a.m. until 4:30 p.m. Monday through Friday. Claimant's immediate supervisor was Jamie Wagner. Mr. Teter was discharged on July 24, 2012 after he called in on July 23, 2012 stating that he could not report for scheduled work due to transportation issues. The claimant had broken down in or near Chicago, Nebraska while returning from a personal trip.

During the course of his employment Mr. Teter had been excessively absent and tardy in the latter part of March 2012. The employer suggested that Mr. Teter visit a doctor to determine if he had a medical condition that caused him to be absent and tardy so often.

Mr. Teter was diagnosed with diabetes and was off throughout the month of April. Upon his return the employer re-emphasized the need for Mr. Teter to be present and punctual. The employer, however, was able to accommodate a reasonable number of absences or tardies related to Mr. Teter adapting to his new medications.

Upon returning from his one month leave of absence, Mr. Teter continued to be excessively absent and tardy. The claimant often was absent due to medical issues associated with his

diabetes and called in to report his impending absences. The claimant continued to be excessively tardy but maintains that each of his instances of tardiness were caused by his diabetes and medications.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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).

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. In the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) the Court held that absence due to matters of "personal responsibility" are considered unexcused.

In this case the claimant was discharged for ongoing excessive absenteeism and tardiness. The final incident that caused the claimant's discharge is when he did not report to work due to transportation problems returning from a personal trip. The Supreme Court of the State of Iowa in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) included transportation problems and oversleeping as matters of personal responsibility that are deemed unexcused.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's job separation took place under disqualifying conditions. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated November 28, 2012, reference 01, is affirmed. The 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.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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