

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID S ZIRON JR
Claimant

APPEAL NO. 10A-UI-07293-ST

STELLAR INDUSTRIES INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated May 10, 2010, reference 01, that held the claimant was discharged for repeated tardiness on April 5, 2010, and benefits are denied. A telephone hearing was held on July 7, 2010. The claimant, and his mother, Lois Ziron, participated. Leanne Van Oort, HR Manager, and Greg Lear, Installation & Assembly Manager, participated for the employer. Employer Exhibits 1-6 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began work for the employer on April 28, 2008 (though he worked there thru a temporary agency from September 2007), and last worked as a full-time hook-lift assembly/mechanic person on April 5, 2010. The claimant received the employer attendance policy that requires an employee to report to work on time or notify a supervisor with one-half hour of any reason for an absence. Repeated tardiness may lead to a termination from employment. The claimant worked the second shift from Monday thru Thursday, 3:30 p.m. to 2:00 a.m.

The claimant received a written warning on January 20, 2010 for being late to work. The claimant overslept when he his alarm clock did not work due to a power outage. The claimant received a written warning and one-day suspension on March 22 for being eight minutes late to work. The claimant had a personal issue involving an assault matter and he was delayed due to filing a police report.

The employer installed a hand reader clock-in, clock-out system in March, and the claimant had no problem using it. A lead person reported at 3:35 p.m. to Manager Lear that claimant was not

at his work station, and could not be located. The hand reader system showed the claimant had not clocked-in. At 6:00 p.m., management had a meeting with claimant who realized he had not clocked-in, as he forgot to do so. The claimant was discharged for repeated tardiness in violation of the employer attendance policy.

REASONING AND CONCLUSIONS OF 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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer established misconduct in the discharge of the claimant on April 5, 2010, for excessive "unexcused" tardiness.

The employer issued warnings to the claimant for tardiness on two, recent occasions, and the reasons for claimant being late were due to personal issues that are not excusable. The later warning put the claimant on notice that a further offense could lead to termination. Not only did the claimant fail to clock in at his 3:30 p.m. start time, he failed to do so by 6:00 p.m. when questioned by the employer on April 5. This failure constitutes a recent incident of misconduct and job disqualifying misconduct in light of the prior warnings.

DECISION:

The decision of the representative dated May 10, 2010, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on April 5, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs