

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DAVID J BANKS**  
Claimant

**APPEAL NO. 18A-UI-09488-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CG ACQUISITION CO**  
Employer

**OC: 08/05/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

CG Acquisition Company (employer) appealed a representative's September 4, 2018, decision (reference 02) that concluded David Banks (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Bailey Voss, Human Resources Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 16, 2018, as a full-time manufacturing associate. He signed for receipt of the employer's handbook on July 17, 2018. The employer has a no fault attendance policy. If an employee is absent for any reason within the first ninety days of employment and accrues three attendance points, the employee will be terminated.

The claimant was absent on July 16 and 20, 2018. The claimant indicated that he walked in on his father who was dying or dead. The funeral was on July 20, 2018. The claimant asked for bereavement time but the time was denied under the no fault policy. The employer assessed the claimant one point for each day of absence. The claimant was tardy for work on July 24 and August 6, 2018, and was assessed a total of one point for the two incidents of tardiness.

The employer terminated the claimant on August 9, 2018, for accruing three attendance points in his first ninety days of employment.

The claimant filed for unemployment insurance benefits with an effective date of August 5, 2018. The employer participated personally at the fact finding interview on August 30, 2018, by Bailey Voss.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of intentional behavior that would be evidence of job-related misconduct. Attending to one's father in his last minutes or going to his funeral is not an example of willful, wanton disregard for the employer's interests.

In addition, the employer did not issue the claimant any warnings about his attendance. Without issuing warnings, the employer has not met the burden of proof to establish the claimant acted

deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's statement and the employer's testimony differed. The administrative law judge finds the claimant's testimony to be more credible. The employer's testimony was internally inconsistent.

**DECISION:**

The representative's September 4, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs