

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH NEISER
Claimant

APPEAL NO: 15A-UI-05415-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 02/22/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 28, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 9, 2015. The claimant participated in the hearing. Colleen McGuinty, Unemployment Benefits Administrator and Kim Woehlk, Industrial Assistant, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

ISSUE:

The issue is 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: The claimant was employed as a full-time packer/general laborer for L A Leasing last assigned to Miller Container from January 19, 2015 to February 20, 2015. The assignment was ended and the claimant's employment with L A Leasing terminated for absenteeism.

The claimant worked from 3:00 a.m. to 11:00 a.m. On February 18, 2015, the claimant called in to report he would be absent that day and received one attendance point. On February 20, 2015, the claimant's alarm did not go off and he overslept. He called the client when he woke up at 7:15 a.m. and it asked if he could still come in to work. The claimant responded he could catch the next bus and arrived at 8:00 a.m. The client asked if he could work until 3:00 p.m. and the claimant agreed.

Around 12:15 p.m. the claimant's phone rang but he was on the production line and could not take the call at that time. He checked his messages at his 1:00 p.m. break time and heard a message from L A Leasing notifying him that his assignment was terminated because he was a considered a no-call no-show that day and assessed two attendance points. Temporary employees are only allowed two attendance points within their first three months and one week of the assignment. The claimant checked with the client who confirmed the end of his assignment.

The claimant received written warnings for no-call no-shows April 30, 2007; July 6, 2007; March 8, 2008; and August 30, 2014.

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 § 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.

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 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).

The claimant accumulated one attendance point for a properly reported absence February 18, 2015, and two points for a no-call no-show absence because he overslept February 20, 2015, although he did go into work and worked several hours before being notified his employment was terminated. While the claimant had received four written warnings in the past for no-call no-show absences, three of those were seven and eight years ago and are not relevant to the claimant's last assignment or absences.

The claimant did accumulate two absences within three days during the first month of his last assignment. Although the last absence was considered a no-call no-show, the claimant called as soon as he woke up and the client not only instructed him to come in to work but allowed him to work several hours before informing him it was ending his assignment. Under these circumstances, his last absence is an incident of tardiness rather than a no-call no-show. While one absence and one incident of tardiness within one month does not constitute an excellent attendance record, it also does not rise to the level of excessive, unexcused absenteeism either. Therefore, benefits are allowed.

DECISION:

The April 28, 2015, reference 02, 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