

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW C WILLINGHAM**  
Claimant

**APPEAL NO. 08A-UI-11169-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 10/26/08 R: 03  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Schenker Logistics, Inc. filed a timely appeal from an unemployment insurance decision dated November 14, 2008, reference 01, that allowed benefits to Matthew C. Willingham. After due notice was issued, a telephone hearing was held December 17, 2008 with Mr. Willingham participating and presenting additional testimony by Tara Lund. Doug Steffeny and Michael Watkins testified for the employer which was represented by Roxanne Rose of ADP-UC Express. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Matthew C. Willingham was working as a labor room operator for Schenker Logistics, Inc. at the time of his discharge on October 24, 2008. The final incident leading to his discharge had occurred on October 22, 2008. Without clocking out, Mr. Willingham had left the premises at 10:54 a.m., returning at 11:25 a.m. He had also left the premises without clocking out on October 17 and on October 13, 2008. These occurrences followed a final warning given to him on August 11, 2008. While Mr. Willingham was allowed to combine his two 15-minute breaks during the day, he was not allowed to leave the premises without clocking out. His departures and returns were noted by the guards at the security gate.

Mr. Willingham has received unemployment insurance benefits since filing a claim during the week of October 26, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. 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.

The employer's evidence was based upon company time records and security records maintained at the facility at which Mr. Willingham was employed. Mr. Willingham acknowledged that he had in the past left the premises without clocking out. His testimony that the three October instances were due to the errors of the security guards and/or problems with the time clock system is not persuasive. The administrative law judge concludes from the evidence that the claimant was discharged for repeated acts of behavior that had led to his final warning. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall

be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Willingham must repay the benefits he has already received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated November 14, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of whether he must repay benefits already received is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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