

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ERIC J WILLIAMS
1204 W CHURCH ST
MARSHALLTOWN IA 50158

LENNOX MFG INC
PO BOX 250
MARSHALLTOWN IA 50158

Appeal Number: 05A-UI-05522-JTT
OC: 10/24/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Eric Williams filed a timely appeal from the May 13, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 13, 2005. Claimant did participate. Employer did participate through Human Resources Administrator Kellie Shollenbarger, who presented additional testimony through Employee Relations Manager Dick Tesar. Exhibits One through Five were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Eric Williams was employed by Lennox on a full-time basis from August 22, 2003 until March 31, 2005, when Employee Relations Manager Dick Tesar suspended him for misconduct based on excessive absenteeism. Mr. Tesar subsequently discharged Mr. Williams on April 5, 2005.

The final absence occurred on March 31, 2005, when Mr. Williams returned late from a break after he fell asleep. The additional absences Lennox considered were as follows. On March 1, 3, 4, and 8, Mr. Williams called in sick and properly notified the employer. Mr. Williams was a no-call/no-show on March 11, 14, 16, and 18. Mr. Williams was then absent March 21-24 on Family and Medical Leave related to issues with depression. On March 29, and 30, Mr. Williams was a no-call/no-show. Mr. Williams had previously received written reprimands for his poor attendance on July 28, 2004, March 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Williams was discharged for misconduct in connection with his employment based on excessive unexcused absences. 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(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.

Because the claimant was discharged, the employer bears 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

In order for Mr. Williams' absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that the unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence establishes that Mr. Williams' tardiness in returning from his break on March 31, 2005, was an unexcused absence. The evidence further establishes that Mr. Williams' absences on March 11, 14, 16, 18, 29, and 30 were unexcused absences. Based on the evidence in the record and the applicable law, the administrative law judge concludes that Mr. Williams' unexcused absences were excessive. Mr. Williams was discharged for misconduct and is, therefore, disqualified for benefits.

DECISION:

The representative's decision dated May 13, 2005, reference 02, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

jt/sc