

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL L MOORE
Claimant

APPEAL NO: 18R-UI-06307-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAL ENTERPRISES INC
Employer

OC: 04/01/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 18, 2018, reference 01, 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 26, 2018. The claimant participated in the hearing. Shea Compton, Director of Human Resources; Jenna Johnson, Property Manager; Paige Connoles, Human Resources Assistant; and Tracy McManus, Asset Manager; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five 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 maintenance technician for Dial Enterprises from June 17, 2013 to March 28, 2018. He was discharged for leaving the property without clocking out, in violation of his performance improvement plan (PIP).

On December 24, 2017, the claimant received a written warning for failing to help with snow removal in a timely manner (Employer's Exhibit One). At 10:54 a.m. Property Manager Jenna Johnson spoke to the maintenance manager and was told the claimant told him to do half of the property and he would be out later to do the other half (Employer's Exhibit One). Ms. Johnson sent a group text to all the maintenance technicians and explained and stated the snow removal needed to be done immediately and asked for a response but did not receive one (Employer's Exhibit One). At 11:22 a.m. the claimant texted Ms. Johnson and said, "I've been talking to Dan (Maintenance Supervisor) and we already had it planned out. I'm at Menards getting salt but I'll just head there instead," (Employer's Exhibit One). The claimant clocked in at 11:55 a.m.

On January 10, 2018, the claimant received a written warning after co-workers complained he was sitting in the shop and not contributing to their daily work (Employer's Exhibit Two). The

claimant had been instructed to get an apartment ready to rent between January 2 through January 5, 2018, and the unit was still not ready by January 10, 2018 (Employer's Exhibit Two).

On February 28, 2018, the employer issued the claimant a written warning after he arrived at work with his daughter in his vehicle, clocked in, and then asked if he could take his daughter to her grandparents. He left without clocking out (Employer's Exhibit Three).

On March 2, 2018, the claimant was placed on a PIP due to his day to day work, disrespect toward management and co-workers, accountability for his attitude and performance, team work and communication, and leaving the property while he was on the clock (Employer's Exhibit Four). The PIP stated, "Leaving the property while on the clock for something other than business purposes is unacceptable. This is stealing from the company. This is being addressed in a separate write up and if it happens again you will be terminated" (Employer's Exhibit Four).

The claimant's stated hours were 9:00 a.m. to 5:00 p.m. If employees clock in early they usually leave early or earn overtime. The claimant generally clocked in at 8:30 a.m. On March 27, 2018, Ms. Johnson observed the claimant clock in at 8:30 a.m. and leave the property at 8:32 a.m. She texted him and asked if he just clocked in and left and the claimant responded in a group text at 8:34 a.m. that he was going to get snacks at the grocery store. He then asked, "Is that okay?" The claimant testified he did not bring anything for lunch and wanted to go to the store to get items to make a sandwich. The employer notified the claimant his employment was terminated on March 28, 2018, for violating the performance improvement plan.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant received a written warning February 28, 2018, when he brought his daughter to work with him and clocked in and then asked if he could leave to take her to her grandparents. Although the claimant asked Ms. Johnson if he could go, he left her little choice in the matter as his daughter could not remain at work with him but he should have known he would be expected to clock out if he was leaving the premises and was not on break or lunch. The employer issued the claimant a PIP March 2, 2018. That plan clearly stated that leaving the property while on the clock for anything other than business purposes was "unacceptable" and considered theft of time from the company". The plan also plainly stated, "If it happens again, you will be terminated." The PIP was given to the claimant 25 days before the final incident, which involved the claimant leaving to go get food from a grocery store so he could make sandwiches. He was not on lunch or break and clocked in 30 minutes earlier than his start time. He easily could have gone to the store before going to work. It is an employee's responsibility to bring the snacks he wants to work with him. It is irresponsible and unrealistic to expect to clock in at work and then immediately leave to go get food, especially when the employer has so recently warned the claimant his job was in jeopardy for that very behavior. The claimant takes no responsibility for any of his actions and instead relies on the refrain that everyone else does it. Whether that is true or not, the claimant still needs to accept responsibility for his own actions so he can take steps to correct his behavior.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The April 18, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn