

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDOUAR L WILSON

Claimant

APPEAL NO: 15A-UI-04372-LD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 03/08/15

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Edouar L. Wilson (claimant) appealed a representative's March 25, 2015 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Whirlpool Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2015. The claimant participated in the hearing. A review of the Appeals Bureau's conference call system indicates that the employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about January 3, 2012. He worked full time as a set up and machine operator in the plastics department of the employer's Amana, Iowa facility. He worked most recently on the first shift, 7:00 a.m. to 3:30 p.m. His last day of work was on or about March 11, 2015. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a six-point attendance policy. Prior to February 26, the claimant had four attendance points; three were due to doctor's appointments for his daughter with special needs and one was due to not having transportation. He had been given warnings for these occurrences in November and December 2014.

The claimant did not have his own means of transportation to work but was dependent on coworkers or others to give him a ride. He had been absent from work again on February 2, 2015 because his ride did not come to pick him up, due to being hung-over from the Super Bowl. On his way home with his ride on February 25, a tire came off her car. It was not

repaired by February 26 or even by March 3. He did not have another ride readily available, so he was absent on February 26. On March 2 and March 3, he was an hour late each day; as the alternative ride he was able to arrange those days did not pick him up early enough to get him to work on time.

As a result of these additional occurrences, on March 11 the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. Rule 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences or tardies due to issues that are of purely personal responsibility, specifically including reliable transportation issues, are not excusable. *Higgins*, supra; *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence and tardies were not excused and was not due to illness or other grounds reasonably outside the claimant's control or ability to correct. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 25, 2015 (reference 01) decision is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 11, 2015. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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