

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

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WINNEBAGO INDUSTRIES
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Appeal Number: 05A-UI-08691-H2
OC: 07-24-05 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 16, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Mason City, Iowa, on October 25, 2005. The claimant did participate. The employer did participate through Gary McCarthy, Personnel Supervisor, and Kurt Mitthun, Shop Supervisor. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a master technician full time beginning November 1, 1967 through July 27, 2005 when he was discharged. The claimant was discharged for failing to punch in on

his time card at the beginning of his shift. July 26 was the claimant's first day back at work after a five-day suspension for failing to punch in on his time card. Prior to the start of the claimant's shift, his Supervisor Mr. Mitthun approached him and made sure that the claimant had the right time card for the day. Mr. Mitthun specifically reminded the claimant to punch in on the correct time card for July 26. The claimant admits he did not punch in his time card on July 26 because he forgot. The claimant was last warned on July 19, 2005 that any other violation of company policy would result in his termination. The final suspension and written warning was issued when the claimant failed to punch in his time card on July 14 and July 15. The claimant admits he knew he was to punch in his time card everyday and that prior to the beginning of his shift of July 26 Mr. Mitthun had specifically approached him and insured that he had the correct time card to punch in. The claimant indicated he had no medical condition that would impact on his memory.

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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had just returned from a five-day suspension for failing to punch in on his time card on July 26. He admits his supervisor approached him shortly before his shift started to insure that he had the correct time card to punch in for the day. The claimant had received fair warning that the employer was no longer going to tolerate his performance and conduct, specifically that he would be terminated if he failed to punch in again. The claimant had fair warning that there were changes he needed to make in order to preserve his employment. Under these circumstances, the administrative law judge cannot conclude that the claimant's failure to punch in was a mere mistake. The claimant's conduct evidences a pattern of failing to punch in for which he had been warned about on more than one occasion. The claimant's action, that is failing to punch in on July 26, is substantial misconduct sufficient to disqualify him from receiving benefits. Benefits are denied.

DECISION:

The August 16, 2005, 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.

tkh/tjc