

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MUSTAFA J FARAH
Claimant

APPEAL NO. 16A-UI-09587-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 11/22/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wells Enterprises (employer) appealed a representative's August 29, 2016, decision (reference 02) that concluded Mustafa Farah (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 21, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by David Anderson, Human Resources Recruiter. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 22, 2013, as a full-time assistant machine operator. The claimant signed for receipt of the employer's handbook on April 22, 2013. The handbook states that an employee will be terminated if he accumulates ten attendance points in a twelve-month rolling period. On October 14, 2015, the employer issued the claimant a written warning for accumulating eight occurrences.

The claimant's wife was in a car accident and had surgery in Minnesota. The claimant arranged with the employer to trade shifts and not work on August 1, 2016. The employer recorded the claimant as being absent without notice on August 1, 2016. The claimant received his ninth attendance point for his absence on August 1, 2016.

On August 4, 2016, the claimant's wife was driving back from Minnesota after her recovery, she had a flat tire. The claimant asked his supervisor if he could leave work to help her. The supervisor told the claimant he could leave. The supervisor said it was a family emergency and

the claimant would not receive any points. The claimant received his tenth attendance point because he left early on August 4, 2016. The employer terminated the claimant on August 11, 2016, for accumulating ten attendance points.

The claimant filed for unemployment insurance benefits with an effective date of November 22, 2015. The employer participated personally at the fact-finding interview on August 25, 2016, by Phyllis Farrell, the employer's representative. The employer's representative did not have firsthand knowledge of the events leading to the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service,

351 N.W.2d 806 (Iowa App. 1984). The employer did not tell the claimant the truth about accumulating points on August 4, 2016. The claimant relied on the employer's statement and left work. The employer provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 29, 2016, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs