

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REGINALD HAYNES**  
Claimant

**APPEAL NO. 12A-UI-04628-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 12/18/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated April 23, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 16, 2012. The claimant participated. The employer participated by Ms. Deborah Beighley, owner.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Reginald Haynes was employed by Express Services, Inc. from September 18, 2007, until March 29, 2012, when he was discharged for excessive tardiness. Mr. Haynes was assigned to work at the Con-Trol Container Management Company as a tote wash worker and was paid by the hour. His immediate supervisor was Vicki Saltz.

The claimant was discharged for excessive tardiness. The client employer had reported to Express Services that Mr. Haynes had been repetitively tardy in reporting to work. On March 20, 2012, the claimant was issued a verbal warning about his punctuality. The claimant at that time had been tardy on six occasions since the beginning of the year. On March 27, 2012, Mr. Haynes was again tardy in reporting to work and was issued a written warning on March 28, 2012, about his excessive tardiness. The claimant was informed at that time his employment was in jeopardy. Mr. Haynes was discharged when he reported to work on March 29, 2012, one and one-half hours late.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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(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.

The employer has 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. 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 App. 1992). The Supreme Court of Iowa held in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), that excessive unexcused absenteeism is a form of job misconduct. The Court held that it must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court held in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984), that absence due to matters of "personal responsibility," such as transportation problems and oversleeping, are considered unexcused.

No portion of the contract for employment is more basic than the right of the employer to expect employees to appear for work on the hour and day agreed upon. Recurrent failure to honor that obligation shows a substantial disregard for the employer's interests and thus justifies a finding of misconduct in connection with the employment. The claimant was repetitively tardy and continued to be tardy after receiving warnings. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated April 23, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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