

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OSCAR MUNOZ**  
Claimant

**APPEAL NO: 14A-UI-08171-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 03/16/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Oscar Munoz (claimant) appealed a representative's August 1, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from The Hon Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2014. The claimant participated in the hearing. Debra Campbell of Employer's Edge appeared on the employer's behalf and presented testimony from two witnesses, Shea Pavlicek and Brad Walker. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, 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 July 9, 2012. He worked full time as a CNC machine operator on a shift from 4:30 a.m. to 3:00 p.m. with regular overtime. His last day of work was July 15, 2014. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a nine point attendance policy. Prior to January 1, 2014 the claimant had incurred 7.5 occurrence points of which at least 3.0 points were due to at least six tardies; there was also at least one point for an absence due to neck pain. The claimant was aware that he started the new year with only 1.5 points left to go before he had used up his nine points. He would have lost another point on January 27 for an absence due to illness, but he used one of his two annual "free passes," so he remained at 1.5 points. He would have lost a half-point on February 5 for a tardy, but again used his second "free pass," so he again remained at 1.5 points. He initialed the attendance calendar on February 5 to acknowledge that he knew where he was on points. He gained a half-point back through roll over on February 15, bringing him back up to 2.0 points, but then called in an absence on March 24 that he was "not going to make it in"; this took him back down to 1.0 points. Another point rolled off on April 18, returning

him to 2.0 points. On May 12 he called in an absence because his car would not start; he therefore lost another point and went back down to 1.0 points. He initialed the attendance calendar indicating he was aware he was down to 1.0 points. He then was tardy on June 7, taking him down to 0.5 points. He regained a point on June 8, returning him to 1.5 points. On July 7 he left over two hours early because he had no babysitter; this resulted in an assessment of 1.0 points, taking him down to 0.5 points. The final occurrence was that the claimant was tardy on July 11 and lost his final 0.5 points.

The claimant asserted that he thought the July 7 occurrence would only cost him a half-point. However, the attendance calendar clearly shows in the second column that it would be a full point. While there might have been some initial confusion as to whether the remaining balance was 1.0 points or 0.5 points, the claimant did not verify this with the employer's human resources personnel. Further, while the claimant indicated that he "might" have been able to stay longer at work had he clearly understood that leaving work at that time would be a full point, he had already exhausted all of his available options to find alternative child care that day. He knew or should have known that he was on the edge regarding his attendance, and regardless decided to leave due to the lack of child care.

#### **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).

Excessive and unexcused absenteeism can constitute misconduct. 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). The presumption is that tardies are generally within an employee's control. *Higgins*, supra. Absences due to issues that are of purely personal responsibility, specifically including child care and transportation issues, are not excusable. *Higgins*, supra; *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant had excessive unexcused attendance occurrences and his final occurrence was not excused and was not due to illness or other reasonable grounds. The

claimant had previously been warned that future absences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 1, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 15, 2014. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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