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

JOSHUA R HOSKINS
323 RANDOLPH
OTTUMWA IA 52501

WORKFORCE INC
119 E COLUMBIA ST
FARMINGTON MO 63640

Appeal Number: 06A-UI-02690-SWT
OC: 02/12/06 R: 03
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 2, 2006, reference 04, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 27, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Becky Fowler participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from December 21, 2005, to February 13, 2006. He was assigned to work at the Rubbermaid plant in Centerville about 45 miles from his home in Ottumwa. The claimant was informed and understood that under the

employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received three attendance points during their first sixty days of employment.

The claimant and his fiancée, who also worked for the employer, drove to work together in his fiancée's car. His fiancée had filed a complaint alleging she was harassed by a co-worker in early January 2006. As a result, she felt uncomfortable reporting to work on January 9 since the complaint was being investigated and decided not to report to work. The claimant was not covered by insurance to drive his fiancée's car and had no other transportation to work. The employer was properly notified about his absence on January 9, and the claimant understood based on comments by his fiancée's supervisor that his absence would be excused that day. The employer, however, gave the claimant a point for missing work that day, but did not tell the claimant.

The claimant was not absent from work on January 18, but a supervisor recorded on the attendance calendar that he has absent from work. The claimant did not receive a warning stating that he was had two attendance points.

On February 2, 2006, the claimant and his fiancée were on their way to work when the car stopped several miles outside Ottumwa and would not start. They walked back to Ottumwa and properly notified the employer that they would not be at work that day because of car problems. They were unable to work due to a situation outside their control as there was something mechanically wrong with the ignition system of the car.

The claimant reported work on February 3, 2006. On February 4, the claimant received a written warning. It stated that he was at two attendance points depending on whether the absence on January 9 was considered excused. The employer determined that the absence on January 9 was unexcused even though his fiancée got the day excused.

The claimant continued to work until February 13, 2005, when the employer discharged him for having three attendance points.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

871 IAC 24.32(7) provides:

> Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer presented no substantial proof that the claimant was absent on January 18 and the claimant denied missing work that day and presented evidence that he believed the absence was erroneously recorded. Since the attendance calendar lists January 18 as his second point, it seems unusual that he would not have received the two-point warning that is part of Rubbermaid's progressive discipline policy for attendance during the first 60 days of employment.

The Iowa Supreme Court has ruled that: "Habitual tardiness or absenteeism arising from matters of purely personal responsibilities such as transportation can constitute unexcusable misconduct." Harlan v. Iowa Dept. of Job Service, 350 N.W.2d 192, 194 (Iowa, 1984). The facts in this case, however, are quite different from the Harlan case. Here, the claimant missed only two days and final absence was due to car problems beyond his control. He properly reported his absences. He was unaware that his job was in jeopardy for absenteeism until after he incurred his final absence. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated March 2, 2006, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

saw/tjc