

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTOPHER ANDERSON
Claimant

APPEAL NO. 18A-UI-07270-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOWNE PARK LLC
Employer

OC: 06/10/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christopher Anderson (claimant) appealed a representative's June 28, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Towne Park (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 25, 2018. The claimant participated personally. The employer provided a telephone number for the hearing. The administrative law judge spoke to Connor Allison who indicated the employer did not wish to participate in the hearing. Exhibit D-1 was received into evidence. The claimant offered and Exhibit A 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 September 2, 2016, as a full-time hourly guest services coordinator. He signed for receipt of the employer's handbook on September 2, 2016. The claimant was tardy approximately twelve times in 2018. He thought other employees were tardy all the time. He told the employer he would be thirty to sixty minutes late every Monday because he had to take his son to school. The claimant but does not remember the employer voicing approval for his assertion.

On January 4, 2018, the employer issued the claimant a written warning for failure to properly report his absence two hours prior to the start of his shift. On April 4, 2018, the employer issued the claimant a written warning for failure to properly report his absence two hours prior to the start of his shift. The employer notified the claimant each time that further infractions could result in termination from employment.

After his warning on April 4, 2018, the claimant sent an e-mail to human resources on April 13, 2018. In it he criticized three of his four subordinates, two of his co-workers, and his supervisor. He thought they had a lack of respect for his "experience and operational prowess".

On May 3, 2018, the employer issued the claimant notice of suspension pending termination. The discipline notice indicated the claimant was forty minutes tardy on Monday, April 23, 2018, eighteen minutes tardy on Wednesday, April 25, 2018, and ten minutes tardy on Tuesday, May 1, 2018. The claimant gave no notice of his tardiness to his supervisor. In addition, the claimant did not complete paperwork and had customer complaints. On May 15, 2018, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Repeated failure to follow an employer's instructions in

the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. It is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions.

The claimant did not properly notify the employer of his absences. The employer has established that the claimant was warned that further improper notification of absences could result in termination of employment. The final tardy was not properly reported. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 28, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs