

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL R RAINVILLE
Claimant

APPEAL NO: 13A-UI-02283-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREYSTONE MANUFACTURING LLC
Employer

OC: 01/13/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Daniel R. Rainville (claimant) appealed a representative's February 14, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Greystone Manufacturing, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2013. The claimant participated in the hearing. Marilyn Crawford appeared on the employer's behalf. 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 May 10, 2012. He worked full time as an operator on the third shift, usually from 10:00 p.m. to 6:00 a.m. His last day of work was the shift that started on the evening of December 26 and went into the morning of December 27, 2012. The employer discharged him on December 27. The reason asserted for the discharge was excessive absenteeism.

On the evening of December 26 the claimant was supposed to report for work at 9:30 p.m. He did not report for work until about 11:15 p.m., even an hour and 15 minutes past his normal start time. He indicated that he had gotten ready for work and had then fallen asleep watching television.

The claimant had four prior absences, two call offs without proper advance notice, and two no-call, no-shows. As a result, on November 3, 2012 he had been placed on probation under which he could have no further attendance issue through March 3, 2013. As a result of his tardy and failure to report for the start of his shift on December 26, the employer discharged the claimant.

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. 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. 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. 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. 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 oversleeping is generally within an employee's control. *Higgins*, supra. The claimant's final occurrence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future occurrences before March 2, 2013 could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 14, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 27, 2012. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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