

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM C SMITH**  
Claimant

**APPEAL NO. 11A-UI-12696-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REVSTONE CASTING FAIRFIELD LLC**  
Employer

**OC:12/26/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 23, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 20, 2011. Claimant participated. The employer did not respond to the hearing notice and did not participate. The record consists of the testimony of William Smith.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as an inoculator for the employer, which is a foundry. The claimant worked for the previous owner and was kept on when the business changed hands on December 1, 2010. The claimant was a full time employee. The claimant's last day of work was August 26, 2011, which was the date of his termination.

The employer had a collective bargaining agreement with a union. That collective bargaining agreement contained an attendance policy. An individual was given one point for an absence and one half point for tardiness. The individual was terminated at eight points. The claimant reached eight points on August 25, 2011, when he overslept. The claimant's points were all accumulated due to oversleeping. He would either be absent or would sleep through his shift. He attributed his oversleeping to the wear and tear on his body of coming to work at 2:00 a.m. and leaving at 5:00 or 6:00 p.m.

The claimant did not file a grievance with the union over his termination.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such as transportation problems and oversleeping, is considered unexcused. See *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The employer has the burden of proof to show misconduct.

Although the employer did not participate in the hearing, the claimant's testimony established that he was terminated for excessive unexcused absenteeism. The claimant was terminated after he reached eight attendance points on August 25, 2011. A collective bargaining agreement stated that if an individual reaches eight points, termination results. The claimant testified that all of his absences were due to oversleeping. Oversleeping is not considered an excused absence because it is a matter of personal responsibility. The claimant was therefore terminated for excessive unexcused absenteeism, which is misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated September 23, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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