

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L TUTTLE

Claimant

APPEAL NO. 11A-UI-11851-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC

Employer

OC: 08/07/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 7, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on October 4, 2011. The claimant participated personally. The employer participated by Mr. Thomas Kuiper, hearing representative, and witness Mr. Jason Ischeid, center director. Employer's Exhibits 1, 2, 3, and 4 were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Daniel Tuttle was employed by Thomas L. Cardella & Associates from September 24, 2010, until August 9, 2011, when he was discharged from employment. Mr. Tuttle worked as a full-time telephone sales representative and supervisor in training and was paid by the hour. The claimant worked 7:30 p.m. until approximately 4:00 a.m.

Mr. Tuttle was discharged when he exceeded the permissible number of attendance infractions allowed under company policy. Mr. Tuttle was aware of the policy and had been warned prior to being discharged. Under the employer's "no-fault" attendance policy, employees are subject to discharge if they exceed a certain number of attendance infraction points within a specified period. The claimant's most recent absences took place on July 23 or 24 when he was required to leave work early and be absent due to illness.

The final attendance infraction that caused the claimant's discharge took place when Mr. Tuttle was unable to return to work timely after taking a lunch break on the night of August 8, 2011. That night, while on his lunch break, Mr. Tuttle was initially stopped by the police, and then surrounded by other police, based upon an apparent mistaken identity. Although the claimant had not violated any traffic ordinances, he nonetheless was issued a citation for failing to stop at a stop sign. There was no stop sign at the location.

When Mr. Tuttle returned to work that night one hour late, he immediately explained to his immediate supervisor the circumstances of his tardiness from returning from lunch and his intention to contest the citation given to him. Mr. Tuttle's supervisor indicated that the employer would take into consideration the factors of his most recent attendance infraction. The claimant was nevertheless discharged by the center manager the following day.

At the time of hearing, Mr. Tuttle has had all charges dismissed related to his absence on the night of August 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d, 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32 (8).

The evidence in the record establishes that Mr. Tuttle was unjustifiably stopped by police authorities on the night of August 8, 2011, and detained for over one hour due to an apparent case of mistaken identity. He was also issued a citation for failing to stop at a stop sign, although no stop sign was present at the location. The claimant acted in a reasonable manner by immediately explaining the circumstances of his late arrival back from lunch, indicating that he was late due to factors beyond his control and that he planned on fighting the charges that had been brought against him. Although the claimant's supervisor indicated the employer would consider the circumstances, he nevertheless was discharged the following day.

As the evidence in the record establishes that Mr. Tuttle's late arrival on the night of August 8, 2011, was due to factors clearly beyond his control, the administrative law judge concludes that the claimant has not engaged in willful, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated September 7, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw