

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TROY V LOWER**  
Claimant

**APPEAL NO. 07O-UI-08127-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GILLETTE COMPANY  
ORAL-B LABORATORIES**  
Employer

**OC: 06/17/07 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Troy Lower (claimant) appealed a representative's July 3, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Gillette Company/Oral-B Laboratories (employer) for unexcused absenteeism and tardiness after having been warned. A hearing was held on September 10, 2007, following due notice pursuant to Remand Order of the Employment Appeal Board dated August 22, 2007. The claimant participated personally. The employer participated by Becky Hasler, Employee Relations Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**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 January 16, 1996, as a full-time technician level three. The claimant felt that he was treated poorly by management and began to have attendance issues. The employer issued the claimant at least ten written warning for tardiness or excessive absenteeism in the last year the claimant was employed. The employer warned the claimant that further infractions could result in his termination from employment. The claimant understood he had to arrive at work approximately five minutes before his scheduled start time to be at his workstation at the start of his shift.

On May 20, 2007, the claimant walked in the door at 7:02 a.m. for a start time of 7:00 a.m. He did not arrive at his workstation until approximately 7:05 a.m. The claimant knew he was tardy but did not notify the employer of his tardiness for timecard purposes. The employer allowed the claimant two weeks to correct his time records. The claimant did not. The employer investigated and reviewed the surveillance records. On June 13, 2007, the employer terminated the claimant.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 275 N.W.2d 187 (Iowa 1984). Three incidents of tardiness or absenteeism after a warning constitutes misconduct. Clark v. Iowa Department of Job Service, 317 N.W.2d 517 (Iowa App. 1982). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by repeatedly appearing for work tardy. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

## DECISION:

The representative's July 3, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for

misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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