

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RICHARD L ANDERSON
UNIT 2303
8602 WESTOWN PKWY
WEST DES MOINES IA 50266**

**ADECCO USA INC
c/o FRICK UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166-6736**

**Appeal Number: 05A-UI-04783-HT
OC: 04/03/05 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Adecco, filed an appeal from a decision dated April 20, 2005, reference 01. The decision allowed benefits to the claimant, Richard Anderson. After due notice was issued a hearing was held by telephone conference call on June 1, 2005. The claimant participated on his own behalf. The employer participated by Office Supervisor Liz Courtney and was represented by UC Express in the person of Susan Zevin.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Richard Anderson was employed by Adecco from

August 4, 2004 until March 18, 2005. He was assigned to Geolearning.com (Geo) beginning August 16, 2004.

The claimant received a verbal warning from the Geo supervisor, Noel, about his attendance. He had been late to work due to having a job on the night shift, and had been tardy. She advised him he must be punctual and, if he was going to be absent, to notify the employer more than five minutes before the start of the shift.

On March 15, 2005, the claimant met with Noel about going full time. He said he needed a full time job and if he could not get one at Geo then he would have to look elsewhere. The supervisor told him his work was good and he only needed to improve his punctuality and do better at entering his tickets into the computer system. He had been falling behind because the number of people taking the incoming phone calls had been reduced by half and there was not enough time to enter the information into the computer after one call ended before another call came in.

On March 18, 2005, the claimant was 20 minutes late to work due to oversleeping. Noel contacted Adecco and said she wanted the claimant's assignment ended. He was notified by Officer Supervisor Liz Courtney by phone not to return to Geo.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has only presented evidence of two late arrivals to work and a problem with getting tickets entered into the computer system. The latter was a problem which had occurred only after the available personnel had been reduced by half and not enough time was given to the personnel to complete the tickets between calls. Mr. Anderson had not been given a warning about his punctuality on March 15, 2005, only advised it was one of the factors which might prevent him from becoming full time. In any event, two late arrivals cannot be considered excessive in a seven-month time period. The record does not establish any substantial, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of April 20, 2005, reference 01, is affirmed. Richard Anderson is qualified for benefits, provided he is otherwise eligible.

bgh/pjs