

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD A GROSS
Claimant

APPEAL NO: 08A-UI-11283-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE PLUMBING & HEATING SHOP INC
Employer

**OC: 11/02/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Chad A. Gross (claimant) appealed a representative's November 24, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from The Plumbing & Heating Shop, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2008. The claimant participated in the hearing. Lee Smith 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 September 22, 2008. He worked full time as a plumber's assistant on a 7:30 a.m. or 8:00 a.m. to 4:30 p.m. Monday through Friday schedule. His last day of work was October 31, 2008. The employer discharged him on November 3, 2008. The reason for the discharge was excessive absenteeism and tardiness.

On October 31 the claimant was at least 45 minutes late for work due to oversleeping as his alarm had not worked. The claimant had been about an hour late due to oversleeping due to his alarm not working on at least one other occasion. He had also left work early for personal issues on at least one prior occasion. He had received a written warning and suspension for these prior incidents on October 20, and had been verbally counseled on his attitude toward work. In addition to being tardy due to oversleeping on October 31, the claimant had left work several hours early on both October 30 and October 31 to deal with personal legal issues.

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).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 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 within an employee's control. Higgins, supra. At the least, the claimant's final tardy on October 31 was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned and given a suspension as a result of his attendance, and knew or should have known that future incidents would result in discharge. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 24, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 3, 2008. 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

ld/pjs