

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK A WILSON**  
Claimant

**APPEAL NO. 16A-UI-10277-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINK SNACKS INC**  
Employer

**OC: 08/28/16**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 19, 2016, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work on August 25, 2016 for excessive unexcused absenteeism and tardiness after being warned. After due notice was provided, a telephone hearing was held on October 5, 2016. Claimant participated. The employer participated by Ms. Barb Zorn, Human Resource Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Patrick Wilson was employed by Link Snacks, Inc. from October 20, 2015 until August 24, 2016 when he was discharged from employment. Mr. Wilson worked as a full-time equipment operator working the 4:00 p.m. until 2:30 a.m. shift and was paid by the hour. His immediate supervisor was Marc Stark.

Mr. Wilson was discharged from his employment after he exceeded the permissible number of attendance infractions allowed under the company's "no fault attendance policy." Under the terms of the policy employees are subject to discharge if they accumulate ten infraction points within a rolling six-month period. Employees are assessed one attendance point for each unexcused absence and one-half point for tardiness or leaving early. Failure to call in to report an impending absence results in an assessment of five infraction points. After six months the oldest infraction points roll off. Employees are warned about their attendance when they accumulate three points, six points and eight points.

Mr. Wilson had been warned by employer that his attendance was unsatisfactory and that further attendance violations could result in his termination from employment.

The most recent infractions that caused the claimant's discharge took place when Mr. Wilson reported to work to late on August 15, 2016 and called off work for personal reasons on August 17, 2016. The company was unaware that he had exceeded his permissible attendance infraction points and allowed Mr. Wilson to report the next working day. Because Mr. Wilson believed that he would be discharged for exceeding the permissible number of infractions, he discontinued reporting for work but continued to call in for a period of time.

Mr. Wilson had previously requested personal leave from August 9 through August 13 and the company had granted that time as excused absence. The primary reason the claimant was absent from work was related to his personal desire to attend functions with his daughter. Some advanced requests for time off for this reason were not approved by the employer based upon the company's staffing needs.

#### **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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 insurance benefits. Misconduct that may be 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 Ct. of Appeals 1992).

The evidence in this case establishes that Mr. Wilson's unexcused absences were excessive and that the claimant had been properly warned. The primary reason for the claimant's absences or leaving work early was not related to illness but to the personal desire of Mr. Wilson to attend functions with his daughter. The employer at times could not grant the claimant excused absences in advance due to lack of staffing and Mr. Wilson was aware in advance if approval had been given for him to be absent. The final attendance infraction that caused the claimant's discharge took place when Mr. Wilson elected not to report for work because he desired to attend a function with his daughter. The company had inadvertently allowed the claimant to work another day after that date and then the claimant called off work believing that he had been or would be discharged. The claimant's absences were excessive and unexcused. The claimant had been properly warned. Accordingly, the claimant is disqualified for the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated September 19, 2016, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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