

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELO M LUCAS
Claimant

APPEAL NO. 09A-UI-03444-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“DUALE INDUSTRIES INC
“WENDY’S**
Employer

**OC: 01/04/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Angelo M. Lucas filed a timely appeal from an unemployment insurance decision dated February 10, 2009, reference 03, that disqualified him for benefits. Due notice was issued for a telephone hearing to be held March 26, 2009. Mr. Lucas did not provide a telephone number at which he could be contacted. The employer elected to rely upon the documents and statements submitted for the fact-finding interview.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Angelo M. Lucas was employed at a Wendy’s restaurant owned and operated by Duale Industries, Inc. from September 10, 2008 until he was discharged December 23, 2008. The final incident leading to the discharge was his late arrival for work on December 23, 2008. On the day before he had received a warning for being tardy on December 19, 2008. He had also received warnings for swearing in front of customers, for showing up for work out of uniform and for being absent without contact.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is one form of misconduct. See 871 IAC 24.32(7). The evidence in the record establishes two instances of tardiness and an absence without contact in a period of just over two months. The record also establishes other warnings for other violations. The administrative law judge concludes that the evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated February 10, 2009, reference 03, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs