

**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**

**THOMAS CRAFT III
PO BOX 392
WATERLOO IA 50704-0392**

**OMEGA CABINETS LTD
1205 PETERS DR
WATERLOO IA 50703**

**Appeal Number: 06A-UI-03893-JTT
OC: 03/12/06 R: 03
Claimant: Appellant (2)**

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 for Misconduct

STATEMENT OF THE CASE:

Thomas Craft filed a timely appeal from the March 28, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 25, 2006. Mr. Craft participated. Human Resources Representative Amy Victor represented Omega Cabinets. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Craft was employed by Omega Cabinets as a full-time expeditor from March 27, 1999 until March 10, 2006, when Supervisor Tom Buzynski discharged him for attendance. Mr. Craft was

assigned to the first shift. The final absence that prompted the discharge occurred on March 10, when Mr. Craft was tardy eight minutes. Mr. Craft had gone to Cedar Rapids the previous evening. Mr. Craft lived in Waterloo and was aware that he had to work in Waterloo the next morning at the time he traveled to Cedar Rapids. On the morning of March 10, Mr. Craft departed from Cedar Rapids with sufficient time to travel back to Waterloo and report for work at the scheduled start of his shift. However, once Mr. Craft was enroute, the presence of dense fog forced him to travel at a slower speed and prolonged his trip to Waterloo.

The employer has a written attendance policy set forth in an employee handbook. Mr. Craft was aware of the policy. The policy required Mr. Craft to notify the employer prior to the start of the shift if he needed to be tardy or if he needed to be absent due to illness. The policy required Mr. Craft otherwise to notify the employer 24 hours in advance if he needed to be absent. Pursuant to the employer's attendance policy, the employer considered attendance issues with the previous 12-month rolling period in disciplining employees for attendance.

Mr. Crafts only other absence in 2006 was on February 27, when Mr. Craft was absent for illness properly reported to the employer. The employer issued a reprimand to Mr. Craft in connection with this absence and warned Mr. Craft that "future attendance incidents incurred before 3/15/06 will result in termination."

Mr. Craft's absences during that period of 2005 that the employer considered in making the decision to discharge him were as follows. On March 15, Mr. Craft was late because he overslept. On July 30, Mr. Craft was two hours tardy for personal reasons. On August 22, Mr. Craft was absent for personal reasons and notified the employer prior to the scheduled start of his shift that he would be absent.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Craft was discharged for misconduct in connection with the employment that would disqualify him for unemployment insurance benefits. It does 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.

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

In order for Mr. Craft's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the evidence must establish that his unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The weight of the evidence in the record establishes that Mr. Craft's eight-minute tardiness on March 10 was an excused absence under Iowa law. The presence of dense fog on the highway between Cedar Rapids and Waterloo was a matter beyond Mr. Craft's control and made Mr. Craft's tardiness something other than a deliberate, intentional, or culpable act. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The fact that Mr. Craft was only eight-minutes late despite the weather-related delay supports Mr. Craft's assertion that he left Cedar Rapids with ample time to get to work on time under normal driving conditions. Accordingly, the evidence fails to establish a "current act" that might serve as a basis for disqualifying Mr. Craft for unemployment insurance benefits. Mr. Craft is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Craft.

Because there was not "current act" of misconduct, the administrative law judge need not consider the prior absences. Nonetheless, the administrative law judge notes that even if the final absence had been deemed unexcused, the evidence in the record would not have established excessive unexcused absences and Mr. Craft would still have been deemed eligible for benefits.

DECISION:

The Agency representative's decision dated March 28, 2006, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

jt/tjc