

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JAMES W HOWARD**  
Claimant

**APPEAL NO: 18A-UI-04925-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHEARERS FOODS BURLINGTON LLC**  
Employer

**OC: 04/08/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 23, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 15, 2018. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine technician I for Shearers Foods Burlington, LLC from November 14, 2017 to March 29, 2018. He was discharged for allegedly violating the employer's attendance policy.

The employer has a no-fault, point-based attendance policy and employees are terminated upon reaching eight points. Employees are assessed one point for a properly reported absence but receive two points if the absence occurs on a Sunday. Employees are assessed one-half point for an incident of tardiness but receive one point if the tardy occurs on a Sunday. The claimant was scheduled to work from 10:00 p.m. to 6:00 a.m.

The claimant was on a heart medication but when the dosage was changed he felt very drowsy, weak and sick. As a result, the claimant properly reported his illness for three days, one of which was a Sunday, and received a total of four points for those illnesses before his doctor corrected his dosage again. The claimant overslept two days while the employer's schedule was 13 days on and one day off. The claimant also had a headlight out in his car that he could not afford to fix and consequently he was stopped by police three times when he was not taking a taxi. He was 10 minutes tardy once, 30 minutes tardy another time and 5 minutes tardy during the final incident of absenteeism. After the final incident, the employer called him to the office at the conclusion of his shift and told him generally it would suspend an employee who

accumulated that number of attendance points but because the claimant had not worked there six months it would talk to his supervisor and then call the claimant to let him know if the employer was discharging him. The employer contacted the claimant the next day and notified him his employment was terminated.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The April 23, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn