

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER DOTY**  
Claimant

**APPEAL NO: 16A-UI-07376-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER INC**  
Employer

**OC: 06/12/16**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 29, 2016, 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 July 22, 2016. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 forklift operator for Schenker Inc. from June 28, 2014 to June 13, 2016. He was discharged for attendance issues.

The employer uses a no-fault, point based attendance policy and employees are discharged upon reaching ten points. The employer issues an employee a verbal warning if he reaches four points; a written warning if he reaches seven points; and a final written warning if he reaches nine points.

The claimant was absent November 2, 2015; December 7, 2015; December 28, 2015; January 5, 2016; January 6, 2016; January 23, 2016; February 2, 2015; and June 11, 2016. He does not recall the reason for most of his absences. On June 11, 2016, the claimant's wife had their only vehicle and was 30 miles away from their home with their daughter when the starter went out and the claimant had to make arrangements to go get his family as well as his car. He called the employer and reported he would not be at work that evening. He worked June 12, 2016, but on June 13, 2016, the employer called the claimant and notified him his employment was terminated for exceeding the allowed number of attendance points.

The claimant previously received a verbal warning and was issued a written warning January 23, 2016. He did not receive a final written warning upon reaching nine points between January 23, 2016, and his separation date. The claimant believes he had eight points at the time of termination.

### **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 § 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).

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).

While the claimant was discharged for violating the employer's attendance policy, he can only recall eight occurrences that resulted in points during his last year of employment. Because employees are allowed ten points before termination occurs, the evidence does not establish that the claimant violated the employer's attendance policy.

When misconduct is alleged as the reason for the separation it is incumbent upon the employer to participate in the hearing and provide evidence supporting its allegations. The employer did not provide any evidence regarding the claimant's separation from employment and the claimant's testimony does not establish disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits are allowed.

**DECISION:**

The June 29, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs