

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUSTIN A VANDERSCHAAF
Claimant

APPEAL NO. 14A-UI-01529-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETERBILT
Employer

**OC: 01/19/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 7, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 27, 2014, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Jennifer Frank-Scherer, human resources assistant. The record consists of the testimony of Jennifer Frank-Scherer and Employer's Exhibits 1-7.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a dealership, which sells new and used trucks. Service is provided for the vehicles and parts are sold. The claimant was hired on November 21, 2013, as a full-time mechanic. The claimant's last day of work was January 14, 2014. He was terminated on January 14, 2014.

The incident that led to the claimant's termination occurred on January 14, 2014. The claimant had been working on a customer's truck and informed the employer that he was finished. When the foreman checked the claimant's work, he found that the claimant had left a part off the truck. This incident, together with the claimant's habitual tardiness, led to decision to terminate the claimant.

The claimant was tardy on December 5, 2013; December 18, 2013; December 20, 2013; December 26, 2013; December 27, 2013; and absent on December 30, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The legal definition of misconduct excludes unsatisfactory job performance.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record to show that the claimant was terminated for a current act of misconduct. The "final straw" was the claimant's unsatisfactory job performance when he serviced a customer's truck

on January 14, 2014. This is not disqualifying misconduct. The employer did show excessive unexcused absenteeism, but the final absence occurred on December 30, 2013. This is not a "current" act of misconduct as it occurred over two weeks prior to the claimant's termination. There is also no evidence that the claimant was warned about his absenteeism/tardiness or that he knew his job was in jeopardy. Although the employer had good business reasons to terminate the claimant, those business reasons do not constitute disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 7, 2014, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs