

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL W LEWIS**  
Claimant

**APPEAL NO. 09A-UI-00044-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINEGARD COMPANY**  
Employer

**OC: 11/30/08 R: 04  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Paul W. Lewis (claimant) appealed a representative's December 24, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Winegard Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 14, 2009. The claimant participated in the hearing. Craig Cree, a representative with Unemployment Services LLC, appeared on the employer's behalf. Dan Brauns, the operations warehouse manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 2, 2008. The employer hired the claimant to work as a full-time dock worker. The employer's attendance policy informs employees that if they accumulate more than five undocumented attendance occurrences in a year, the employer can discharge the employee.

On September 9, 2008, the claimant received a written warning for his undocumented August 30 absence and for leaving work early on September 6. The claimant left work early on September 6 for a doctor's appointment. He gave the employer a doctor's statement verifying he had been at a doctor's appointment on September 6. After the claimant received the September 9 warning, he understood he could be discharged if he had another undocumented absence. The claimant had accumulated six undocumented or unexcused absences as of September 9. Although Brauns warned the claimant that he could not even be a minute late for work, the claimant did not understand the employer could discharge him for reporting to work late.

The claimant did not have an undocumented or unexcused absence until November 12. On November 12, the claimant inadvertently slept through his alarm and woke up when his shift started at 6:00 a.m. The claimant immediately contacted his immediate supervisor and told him what had happened. The claimant's ride to work had already gone by the time the claimant woke up. After talking to his supervisor, the claimant understood he could use two hours of personal time to cover his absence of two hours. Since the claimant rides to work with a co-worker, he had to make other arrangements to get to work. The claimant's father-in-law took the claimant to work on his way to taking the claimant's children to school. The claimant reported to work about two hours late.

On November 12, the employer discharged the claimant for violating the employer's attendance policy. The employer considered the two hours the claimant was not at work the morning of November 12 as unexcused. Pursuant to the employer's attendance policy, the employer discharged the claimant for excessive absenteeism.

Prior to November 12, the claimant had only been late for work one time. On that occasion, the employee that the claimant rides to work with overslept and they were about seven minutes late for work.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant knew and understood his job was in jeopardy if he had another undocumented absence. Even though the claimant may not have understood he could be discharged for reporting to work late, the evidence establishes the claimant did not intentionally fail to report to work on time. He inadvertently overslept on November 12. As soon as the claimant woke up and realized he was late, he contacted the employer. The claimant took reasonable steps to get to work as soon as he could. The claimant's failure to work as scheduled on November 12 does not constitute work-connected misconduct. This was the first time the claimant overslept and he properly notified the employer that he accidentally overslept and would be at work as soon as possible.

Based on the facts in this case, the employer established business reasons for discharging the claimant. The claimant did not, however, commit work-connected misconduct. Therefore, as of November 30, 2008, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 24, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of November 30, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw