

**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**

**JAY G MEINDERS
BOX 181
LAKOTA IA 50451**

**WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152**

**Appeal Number: 06A-UI-03526-AT
OC: 07/03/05 R: 02
Claimant: Appellant (1)**

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:

Jay G. Meinders filed a timely appeal from an unemployment insurance decision dated March 22, 2006, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held on April 18, 2006, with Mr. Meinders participating. Personnel Supervisor Gary McCarthy participated for the employer, Winnebago Industries. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jay G. Meinders was employed by Winnebago Industries from September 18, 1998 until he was discharged on March 7, 2006. He last worked as a materials handler. Mr. Meinders overslept and was tardy on March 7, 2006. He was tardy on February 22, 2006 because of a dead battery in his car. He received a two-day suspension for the incident and a warning that further attendance problems would lead to discharge. He had received a written warning for being absent on January 23, 2006 because of a flat tire. He had also received a two-day suspension in November of 2005 after accumulating eight incidents of tardiness. He was tardy two more times in 2005 in addition to the incidents in 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to medical conditions are not held against an employee for unemployment insurance purposes if, and only if, they are properly reported to the employer. See Higgins and 871 IAC 24.32(7).

The evidence in the record establishes that two of the incidents in 2006 were because of matters of personal responsibilities, transportation issues. Mr. Meinders indicated in his testimony that he had overslept on March 7, 2006. He did not indicate that it was because of a medical condition or that he notified the employer in advance of his tardiness. The administrative law judge concludes that the evidence establishes excessive unexcused absenteeism. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated March 22, 2006, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

cs/pjs