

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN J SALINAS
Claimant

APPEAL NO. 07A-UI-09517-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 12/24/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 5, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 24, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Gary McCarthy participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an inspector from November 15, 1999, to September 5, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge for excessive unexcused absenteeism after receiving progressive discipline.

The claimant received verbal warning on January 31, 2007, to being late for work. He received a written warning on February 28, for being absent without notice on February 23. He received a written warning on April 5, for being absent on April 3. He received a verbal warning after he was 50 minutes late for work on April 10. He also received a verbal warning on July 11 for his absence due to illness on July 10. He was late again on July 17 and received a final written warning on July 18. As part of the warning, the claimant was placed on probation due to his attendance and informed that he would be discharged if he were late or absent again.

The claimant had problems with his car's battery on September 5. His father lives with the claimant, and they were able to jump start the car. The claimant was 15 minutes late for work.

The employer discharged the claimant on September 5, 2007, for excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The preponderance of the evidence establishes the claimant was discharged for excessive unexcused absenteeism that included tardiness of up to 50 minutes and an absence without

notice to the employer. The claimant had been disciplined several times including a final warning on July 18. The final incident did not involve a reasonable excuse. The claimant said he was late due to a problem with his battery and had to get a jump start from his father. Since he knew he could be disciplined if he was late, he should have simply used his father's car to get to work since he and his father live in the same household.

DECISION:

The unemployment insurance decision dated October 5, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs