

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD J ARMSTRONG
Claimant

APPEAL NO. 16A-UI-09588-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 12/27/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wells Enterprises (employer) appealed a representative's August 25, 2016, decision (reference 08) that concluded Edward Armstrong (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 21, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by David Anderson, Human Resources Recruiter. The employer offered and Exhibit One was received into evidence. Exhibit D-D-1 was received into evidence.

After the record closed on September 21, 2016, the claimant called and asked that the record be open so he could give testimony. The employer was reached and the parties agreed to reopen the record for testimony on September 23, 2016, at 9:00 a.m. The administrative law judge called the claimant three times and left messages. The claimant did not respond to the messages. The administrative law judge based her decision on the testimony and evidence provided at the hearing on September 21, 2016.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 9, 2016, as a full-time temporary seasonal cat B line helper. The claimant signed for receipt of the employer's handbook. The handbook said that employees would be terminated if they accumulated five attendance points. The employer provides transportation to work for employees through a third party shuttle system. Posters at work advertise the free transportation.

The shuttle was often late even though the claimant always arrived twenty minutes in advance of the shuttle pick up time. The claimant and other workers explained the situation to the employer but attendance points were assessed for tardiness anyway. On July 11, 2016, the employer issued the claimant a written warning for three attendance occurrences.

On July 28, 2016, the claimant arrived at the shuttle stop but it did not appear. He called the shuttle service after forty-five minutes. The claimant knew he had accumulated 4.5 points and if the shuttle ever came and he made it to work, he would be terminated. The shuttle never came after the claimant called the shuttle company. The claimant was terminated for not appearing for work.

The claimant filed for unemployment insurance benefits with an effective date of December 27, 2015. The employer participated personally at the fact-finding interview on August 24, 2016, by Phyllis Farrell, Hearing Representative.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer promised to provide the claimant with transportation to work. The employer did not provide the claimant with transportation to work that was on time. On July 28, 2016, the employer did not provide the claimant with any transportation to work. As a result, the claimant was terminated. The claimant was terminated due to the claimant's failure to provide a service that they promised. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 25, 2016, decision (reference 08) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs