

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EUGENE ORR
Claimant

APPEAL NO. 11A-UI-11353-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

OC: 07-17-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 17, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 20, 2011. The claimant participated in the hearing. Mike Carstens, plant manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time Operator 2 for Archer-Daniels-Midland from August 11, 2008 to July 14, 2011. He was discharged for exceeding the allowed number of attendance points. The employer uses a no-fault attendance policy and considers all absences during the last 12 rolling months in calculating attendance points. The first two incidents of tardiness during the calendar year are assessed one-half point, while all other incidents of tardiness, leaving early, and absenteeism are assessed one point. No-call, no-shows are assessed two points. The claimant accumulated ten points on July 1, 2011, and his employment was terminated July 14, 2011. On July 29, 2010, the claimant was one hour and three minutes tardy and received one point; on August 7, 2010, he was 15 minutes tardy and received one point; on August 15, 2010, he was 15 minutes tardy and received one point; on August 27, 2010, he called in to report he would be absent due to illness and received one point; on December 31, 2010, he misread the schedule and, consequently, did not know he was expected at work and received two points for a no-call, no-show; on February 28, 2011, he left two hours early to attend a custody hearing involving his grandchildren and received one-half point; on June 14, 2011, he was arrested on his way to work because of prior traffic violations, his car was impounded, he was subsequently a no-call, no-show and received two points; on June 24, 2011, he was one minute tardy because he was walking approximately three hours each way to work each day and received one-half point; and on July 1, 2011, he was 21 minutes tardy because it was raining so hard while he was walking to work he had to stop for a period of time. The employer terminated his employment July 14, 2011. During the last rolling 12 months, the

claimant received two written warnings, December 31, 2010 and June 22, 2011, for reaching eight attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant exceeded the allowed number of attendance points in violation of the employer's policy. He received two points for a no-call, no-show June 14, 2011, because he was arrested on his way to work. That resulted in his car being impounded, and the claimant received one and one-half additional points for incidents of tardiness because he was forced to walk a great distance to and from work. Only one of his ten points were the result of properly reported illness. While the administrative law judge is sympathetic to the claimant's plight and admires his fortitude in walking several miles to and from work after losing his car, the claimant did violate the employer's attendance policy and had been warned his job was in jeopardy due to his attendance. Consequently, benefits must be denied.

DECISION:

The August 17, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw