

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

BRION A PEARSALL
1000 BLYTHWD P C48
DAVENPORT IA 52804

IOC SERVICES LLC
1641 POPPS FERRY RD B1
BILOXI MS 39532 2226

Appeal Number: 06A-UI-06642-DW
OC: 05/21/06 R: 04
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

STATEMENT OF THE CASE:

Brion A. Pearsall (claimant) appealed a representative's June 23, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of IOC Services, LLC (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, an in-person hearing was held on August 15, 2006 in Davenport, Iowa. The claimant appeared for the hearing. Sara Frank and Michelle VanBesien, a slot shift manager, appeared 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 April 25, 2005. The claimant worked as a full-time slot attendant. When the claimant started employment, he received a copy of the employer's attendance policy. The claimant understood he could be discharged if he accumulated seven or more attendance points in a rolling 12-month timeframe.

From May 2005 through April 22, 2006, the claimant had accumulated 6.5 attendance points. The claimant had received 3.5 attendance points because he had been late for work seven times since May 28, 2005. The claimant received three more points when he reported and was absent on September 30, November 4 and 5 and did not call or report to work on April 19, 2006. On April 22, 2006, the employer gave the claimant a final written warning for on-going attendance issues. As of April 22, 2006, the claimant understood he could be discharged if he accumulated any more attendance points before May 28, 2006.

For about the last month of his employment, the claimant worked 8:00 a.m. to 4:00 p.m. The employer posts work schedules two weeks in advance. Sometime during the week of April 24, the claimant's supervisor asked the claimant if he could start work at 7:00 a.m. on a particular day. The claimant could and did. On May 2, the claimant did not notice he was scheduled to start work at 7:00 a.m. even though the schedule had been posted for two weeks. The claimant reported to work at 8:00 a.m. Since the claimant was an hour late for work, he received half an attendance occurrence, which meant he accumulated seven attendance points within a rolling calendar year. The employer discharged the claimant on May 4 for violating the employer's attendance policy for excessive absenteeism.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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 accumulated any attendance points between April 22 and May 28, 2006. The claimant's failure to pay close attention to the schedule to know exactly when he was scheduled to work, especially after he had been asked if he could work 7:00 a.m. to 3:00 p.m. and had a history of reporting to work late, constitutes an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of May 21, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 23, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 21, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/cs