

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID C WILLIAMS

Claimant

APPEAL NO. 12A-UI-12249-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARDNER & HAMMONS

Employer

OC: 11/27/11

Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Winegardner & Hammons (Winegardner), filed an appeal from a decision dated September 26, 2012, reference 04. The decision allowed benefits to the claimant, David Williams. After due notice was issued a hearing was held by telephone conference call on November 7, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Manager Christina Long.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

David Williams was employed by Winegardner from March 15 until May 31, 2012 as a part-time banquet set up person. He received verbal warnings from Manager Tony Montinguisse on March 30, April 8, 24, 25, May 4, 12 and 15, 2012, for tardiness ranging from ten minutes to two hours. On May 20, 2012, he was informed he had reached 16 points. Discharge usually occurs at 15 points but because Mr. Williams had not received a final, written warning, he was advised at that time of his point total and that any further absenteeism would result in discharge. On that day he was late one hour and 15 minutes because he had not read the schedule.

On May 31, 2012, he was three hours late for work because he overslept. He was discharged at that time for reaching 20 points.

David Williams filed an additional claim with an effective date of September 2, 2012. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF 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.

The claimant had been advised his job was in jeopardy as a result of his tardiness. In spite of the warning he was three hours late on May 31, 2012, due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant showed a pattern of tardiness throughout the course of his employment. This "last straw," along with the previous incidents, constitutes excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of September 26, 2012, reference 04, is reversed. David Williams is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs