

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID W YATES**  
Claimant

**WAGGONER SOLUTIONS CO**  
Employer

**APPEAL NO. 13A-UI-10619-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated September 11, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism and tardiness on August 14, 2013, and benefits are denied. A hearing was held on October 9, 2013. The claimant participated. Kevin Waggoner, President; Chuck Blanchard, Job Planner/Safety Coordinator; Robert Smith, Production Manager; and Sue Dinwiddie, HR Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on November 21, 2011 and last worked as a full-time labor on August 14, 2013. The claimant received the employer absentee policy that provides he can be disciplined up to termination.

The employer issued claimant a written discipline on May 29, 2013 for severe attendance issues described as excessive tardiness. Claimant signed for the warning. He was told not to be late to work and not miss any more days with the next 90 days. The employer issued claimant a written discipline with a three-day suspension on June 2, 2013 when he punched in late at 6:09 a.m. for his 6:00 a.m. shift start time.

The employer absentee report shows claimant was late to work on July 10, July 18, July 20, July 31, August 1, August 3, and August 9. Most of the late to work reported by claimant was due to transportation issues. The employer terminated claimant of August 14, 2013 for excessive tardiness and other issues.

**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(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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on August 14, 2013, for excessive "unexcused" tardiness.

The employer gave claimant a written discipline and suspension for what is described as a severe tardiness problem. Claimant failed to heed the warning by being late on multiple occasions in July and August leading to termination. Tardiness due to transportation issues is not excusable. Job disqualifying misconduct is established.

**DECISION:**

The decision of the representative dated September 11, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on August 14, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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