

FINDINGS OF FACT:

The claimant started working for the employer on August 2, 2004. The claimant worked full time. The employer's attendance policy informs employees they will be discharged if they accumulate seven attendance occurrences in a rolling calendar year.

The claimant received a documented verbal warning in December 2004 for having four attendance points. The employer gave the claimant a written warning on July 11, 2005, for accumulating five attendance points. On July 20, the claimant had accumulated five and a half attendance points. On August 4, the claimant received his final written warning for accumulating six and a half attendance points. On August 4, the claimant understood his job was in jeopardy and he could be discharged. The majority of the claimant's attendance points occurred when he was ill and unable to work.

On August 24, the claimant went to work early for overtime work. Before the claimant had an opportunity to punch in, his timecard fell into a drain and he had problems retrieving it. When the claimant punched his timecard, the timecard reflected the claimant punched in four minutes late. The claimant's supervisor informed Keller that the claimant told him about problems with his timecard at 11:00 a.m.

Based on information on the timecard, the employer assessed the claimant a half an occurrence, which meant he accumulated seven attendance occurrences within a rolling calendar year. Even though the claimant asserted other employees saw him working before his shift started, the employer did not ask other employees.

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 employer established business reasons for discharging the claimant. Based on the timecard punches, the claimant reported to work late four minutes on August 24, 2005. Even though the timecard reflects the claimant punched in four minutes late, this is not proof that the claimant was actually four minutes late. The claimant knew his job was in jeopardy primarily because he had been ill and unable to work a number of times in the rolling calendar year. The employer did not dispute the claimant's testimony that he was working before his shift started on August 24. (The employer did not know what time the claimant came to work; the employer only knew the claimant's timecard reflected he had punched in four minutes late.) The facts do not establish that the claimant intentionally and substantially disregarded the employer's interests by failing to work as scheduled. The claimant did not commit work-connected misconduct. As of August 28, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 15, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 28, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs