

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDDIE W MCHARDIE
Claimant

APPEAL NO. 07A-UI-03931-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARLEY'S & SATHERS CANDY CO INC
Employer

OC: 04/01/07 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Farley's and Sathers Candy Company, Inc. (Farley's), filed an appeal from a decision dated April 13, 2007, reference 01. The decision allowed benefits to the claimant, Eddie McHardie. After due notice was issued, a hearing was held by telephone conference call on May 1, 2007. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Robin Beech Travis.

ISSUE:

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

FINDINGS OF FACT:

Eddie McHardie was employed by Farley's from July 24, 2006 until March 31, 2007, as a full-time production worker on the 11:00 p.m.-to-7:30 a.m. shift. At the time of hire he received a copy of the employee handbook and the attendance policy. The attendance policy is on a point system and any employee who accumulates eight points in a rolling nine-month period is subject to discharge.

The claimant received written warnings on September 20, and 22, 2006; November 1, 2006; and February 20, 2007. The final warning notified him he was at 7.5 points and would subject to discharge if he accumulated eight points.

Mr. McHardie asked Human Resources Manager Robin Beech Travis for one day off on March 29, 2007, which she granted even though he did not have any paid leave available. It was considered an unpaid, excused absence in order to take his mother to Kansas City, Missouri, for a medical procedure. He returned the next day saying the procedure had to be delayed.

The claimant was no-call/no-show to work for his shift that began at 11:00 p.m. on Friday, March 30, 2007. The next morning his girlfriend called around 8:30 a.m. to say she was supposed to have called in to report him absent the night before but she had forgotten. The employer does allow others to call in and report an employee absent, but all calls must be made at least one hour prior to the start of the shift. This call was made after the shift ended and the claimant then accumulated more than eight points. Mr. McHardie called Ms. Beech Travis later that day and she told him he was discharged for exceeding the attendance points.

Eddie McHardie has received unemployment benefits since filing a claim with an effective date of April 1, 2007.

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 absenteeism. As he did not participate in the hearing, it is not known why he did not call in himself on the evening of March 30, 2007, to report his absence. The fact that his designated agent failed to fulfill the obligation to report him absent is still binding on him. The final occurrence was not a properly reported absence, and under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 13, 2007, reference 01, is reversed. Eddie McHardie is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,388.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw