

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN D SMITH
Claimant

APPEAL NO: 14A-UI-01284-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

OC: 01/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ryan D. Smith (claimant) appealed a representative's January 30, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Exide Technologies (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2014. The claimant participated in the hearing. Tim Guyer appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on September 18, 2013. He worked full time as an assembler in the employer's Manchester, Iowa battery manufacturing facility. His last day of work was January 3, 2014. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a ten-point attendance policy. The employer asserted that as of January 3, 2014 the claimant had reached the ten-point level, through a final absence on December 23, 2013. The employer asserted that the claimant had 2.5 points through five tardies, six points through called-in absences, and 1.5 points through a late reported absence. The employer asserted that this included absences on December 20 and December 23; the claimant denied that he had been absent from work those days. The employer theorized that alternatively the claimant could have been late more than two hours on those days, and so would have been

given a point for each occurrence, but the claimant denied that he had been late on those dates either. No time records or first-hand testimony on behalf of the employer were available to verify the accuracy of the incidents on those days.

The claimant asserted that his last absence was an absence due to illness on December 12, which was properly reported. He calculated that he was at six points through that absence. He had not been given any attendance warnings to advise him of where he stood on points. He had inquired of his supervisor on his points in about November and had reported what he viewed as discrepancies, but had not heard any resolution on the question.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of his job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984) 871 IAC 24.32(7). Here it unclear whether or not the claimant was in fact absent or excessively tardy on December 20 and December 23, but it is clear that the claimant had not previously been warned that his points were approaching the level where his job was in jeopardy so that he would have known that absences or tardies on those days could result in termination. *Higgins*, supra. The employer has failed to meet its burden to establish misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 30, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs