**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN A SHELTON**
Claimant

**REACH FOR YOUR POTENTIAL INC**
Employer

**APPEAL NO. 09A-UI-02703-CT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 12/21/08**
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brian Shelton filed an appeal from a representative's decision dated February 16, 2009, reference 01, which denied benefits based on his separation from Reach for Your Potential, Inc. After due notice was issued, a hearing was held by telephone on March 17, 2009. Mr. Shelton participated personally and Exhibit A was admitted on his behalf. The employer participated by Larisah Sheldon, Human Resources Director. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Shelton was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Shelton was employed by Reach For Your Potential, Inc. from May 19, 2006 until December 22, 2008. He was last employed full time as a facilitator. The employer provides services for mentally retarded and brain-injured individuals. Mr. Shelton was discharged for repeated tardiness.

Mr. Shelton received a written warning on July 31, 2008 because he had been late reporting to work on July 17, 19, and 24. The warning advised that further incidents of tardiness could result in further disciplinary action, including discharge. He was scheduled to work with a client at noon on November 15. He was observed at a tailgate party on the University of Iowa campus at approximately 11:55 a.m. He did not arrive at the client's location until approximately 12:30 p.m. Mr. Shelton received a final warning on December 11, 2008. The warning addressed the fact that he did not meet with a client as scheduled on November 18. However, the client had told him on November 17 that she would be working at the time scheduled to meet with him on November 18. The warning also addressed timecard fraud.

Mr. Shelton was 30 minutes late on December 16 because buses were running late due to the weather. The final incident that prompted the discharge occurred on December 17. Mr. Shelton

was scheduled to meet with a client at 11:00 a.m. He called at 11:34 to report that he would be a little late. He did not arrive until approximately 3:30 p.m. His arrival time was verified on December 18. He was called on December 19 and told to come to the workplace on December 22. He was discharged effective December 22, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

Mr. Shelton was discharged from employment. An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. Mr. Shelton was discharged for repeated tardiness after being warned. He knew from the warning of July 31, 2008 that continued tardiness could result in his discharge. In spite of the warning, he was late meeting with a client on November 15. He was at a tailgate party five minutes before he was scheduled to meet with the client. His presence at the party was not required by his job.

Mr. Shelton was clearly on notice from the December 11 warning that his continued employment was in jeopardy. Although he may have had good cause for not meeting with the client as scheduled on November 18, the warning did serve to again put him on notice that tardiness was unacceptable. In spite of the final warning, Mr. Shelton was late without notice on December 16. Although he had no control over the bus being late, he could have called his employer to advise of the problem but did not. He was over four hours late on December 17. He did not notify the employer of the anticipated tardiness until after the time he was scheduled to meet with the client.

Mr. Shelton's repeated tardiness after being warned constituted a substantial disregard of the standards an employer has the right to expect. The tardiness was not by a mere few minutes. The tardiness was by at least 30 minutes and, on one occasion, four hours. For the reasons stated herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

**DECISION:**

The representative's decision dated February 16, 2009, reference 01, is hereby affirmed. Mr. Shelton was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/css