

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J CHAMP
Claimant

APPEAL NO. 09A-UI-07891-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS LLC
Employer

**Original Claim: 04/05/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christopher Champ filed a timely appeal from a representative's decision dated May 19, 2009, reference 01, holding him not eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 16, 2009. Mr. Champ participated personally. The employer participated by Mr. Thomas Halpin, hearing representative, and Ms. Mindy Eastman, store manager.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: The claimant was last employed as a part-time sales associate for the Express LLC from August 7, 2007 until April 6, 2009, when he was discharged for excessive repeated tardiness after being warned. The claimant was paid by the hour. His immediate supervisor was Mindy Eastman.

Mr. Champ was discharged after he continued to report to work late after being warned by the employer. During the course of his employment, Mr. Champ had repeatedly reported to work late, causing staffing problems for the company. In an effort to improve the claimant's punctuality, he was repeatedly given verbal warnings by the company. The claimant was issued a final warning regarding his lack of punctuality and was discharged when he continued to report to work late. The claimant failed to report for a scheduled meeting on March 30, 2009 to sign a performance improvement plan. The claimant was unable to report for scheduled work on April 2, 2009, due to a hand injury. The claimant was not discharged based upon that absence.

It is the claimant's position that although he was repeatedly tardy in reporting to work, he did not know that he was being discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits. It is.

The evidence in the record establishes that Mr. Champ had been tardy in reporting to work on numerous occasions. The claimant often would report to work 12 minutes to 1 and one-fourth hours late. Although the claimant was repeatedly warned by his employer, Mr. Champ continued to report to work late. The claimant failed to report for a scheduled meeting to sign a performance improvement plan on March 30, 2009, and a decision was made to discharge the claimant from employment based upon his repetitive tardiness after being repeatedly warned. The claimant was discharged from employment when he reported to work on April 6, 2009. The claimant's discharge was not related to his inability to report to work due to a medical condition on April 2, 2009.

The Iowa Supreme Court, in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is one form of misconduct. The court held that the concept includes tardiness, leaving early, et cetera. The Court, in the case of Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984), held that absence due to matters of "personal responsibility" such as transportation problems and oversleeping are considered to be unexcused.

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.

For the reasons stated herein, the administrative law judge finds that the employer has sustained its burden of proof in establishing that the claimant was discharged for misconduct. Benefits are withheld.

DECISION:

The representative's decision dated May 19, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/kjw