

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRKLAND L WILLIAMS
Claimant

APPEAL NO. 14A-UI-01879-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 01/12/14
Claimant: Appellant (5)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 10, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 11, 2014, by telephone conference call. The claimant participated personally. Employer participated by Nicole Finley, on premises manager. The record consists of the testimony of Kirkland Williams and the testimony of Nicole Finley. Employer's Exhibits 1-3 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant was hired on October 28, 2013, to work at Helena Industries as a laborer/warehouse person. The claimant's actual last day of work was January 3, 2014. He was terminated on January 6, 2014, for excessive unexcused absenteeism.

The claimant was absent on December 10, 2013, and January 6, 2014. He was absent on January 6, 2014, due to car troubles. The claimant was tardy on October 29, 2013, October 30, 2013; November 1, 2013; November 14, 2013; December 11, 2013; December 12, 2013; and December 18, 2013. The claimant had several verbal warnings about attendance and knew his job was jeopardy.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant had two absences and seven instances of tardiness in roughly 2 ½ months while working for the employer. The final absence is due to car trouble, which is an unexcused absence. The claimant had been warned about his attendance by Nicole Finley, the on premises manager. He knew his job was in jeopardy. Since the employer has shown excessive unexcused absenteeism, benefits are denied.

DECISION:

The decision of the representative dated February 10, 2014, reference 01, is modified without effect. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs