

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Phil Mueller was employed by Qwest from February 3, 2003 until August 10, 2005. He was a full-time sales and service consultant.

During the course of his employment the claimant received a number of written warnings regarding his chronic tardiness. The final warning was given on June 2, 2005, for failing to work mandatory overtime. He was verbally counseled by Customer Service and Sales Manager Matt Melcher on August 6, 2005, for another tardiness on August 3, 2005, of one hour and 31 minutes. The claimant maintained that he was late due to participating in a sleep study but never explained how that could have caused his tardiness nor did he provide documentation as requested.

On August 10, 2005, the claimant was over two hours tardy to work. He never provided any reason for the tardiness, only kept stating he had "no idea." Supervisor Jamie McAllister discharged him on August 11, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 chronic tardiness. He had received a number of warnings about the problem but his performance did not improve. The final incident was a tardy on August 10, 2005, and the claimant has no independent recollection of how late he was, but did admit to being at least 17 minutes late. Again, he provided no explanation for why he was late, only stating he "had no idea."

Tardies and absences both come under the heading of absenteeism. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Under the provisions of the above Administrative Code section, excessive unexcused absenteeism is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of September 6, 2005, reference 01, is affirmed. Phil Mueller is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf