

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD E GEIKEN

Claimant

APPEAL NO: 13A-UI-06034-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

(01-R) CODE 002-WATERLOO WORKS

Employer

OC: 04/21/13

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 10, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Thomas Smith, the manager of labor relations, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2002. The claimant grieved his termination in 2012. In early October 2012, the claimant, the employer and union agreed to reinstate the claimant but he was on a three-year probation. The agreement indicated that if the employer disciplined the claimant for any reason, including attendance issues, the employer would terminate the claimant's employment.

When the claimant returned to work in October 2012, he worked the night shift as a full-time fork truck driver. After the claimant returned to work he was late for work as follows:

February 27, 2013 – clocked in at 6:31, but then left the building and came back in at 6:34

March 1, 2013, entered the building at 6:29, but left the building and came back in at 6:33

March 8, 2013, came to work at 6:35

March 25, 2013, entered the building at 6:30:56

The claimant understood the employer could discharge him for attendance issues. During the winter months, the claimant left his residence early so he could get to work on time even during adverse weather conditions. A union representative reminded the claimant to keep his attendance in good standing.

On April 13, the claimant forgot to punch in. His supervisor wanted to know what time to clock him in so a gate scan was done on the claimant. Initially the employer looked at the time the claimant came back from lunch for a month. After getting the first month's information, the employer then looked at times the returned from lunch for the next month or from mid-March through mid-February. From February 18 through April 12, the employer noticed the claimant frequently was late coming back from the lunch after being in the Wellness Center. The claimant was less than a minute late 18 times. There were a few times he was more than a minute late, but less than two minutes late.

The claimant worked out in the Wellness Center during his lunch. The claimant could not hear the ten-minute warning bell when he worked out in the Wellness Center. The claimant understood that as long as he was back at his work station before 11:31, he was not late from returning from lunch.

After the employer completed the gate scan, the employer discharged the claimant on April 23, 2013. The employer concluded the claimant continued to show attendance issues after he was reinstated.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood his job was in jeopardy for three years after the employer reinstated him in early October 2012. During the winter months the claimant left his home early to make sure he would get to work on time. On the days, he entered the building, left and came back in he knew it was close to his start time so he clocked in and then parked his car. The claimant had no understanding that reporting back from lunch less than a minute late would lead to his

termination. No one warned him that he was putting his job in jeopardy if he did not report to work after lunch exactly on time. The evidence indicates the claimant made reasonable attempts to resolve his attendance issues. He did not intentionally or substantially disregard the employer's interests.

The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 10, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs