

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH D FOUST
Claimant

APPEAL NO. 09A-UI-18062-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC
Employer

OC: 08/02/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Josh Foust filed a timely appeal from a representative's decision dated December 2, 2009, reference 01, which denied benefits based upon his separation from Uniparts Olsen Inc. After due notice, a telephone conference hearing was scheduled for and held on December 30, 2009. The claimant participated personally. Participating as a witness for the claimant was Mr. Steven Kresser, a former employee at Uniparts Olsen Inc. Although duly notified, the employer elected not to participate.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Josh Foust was last employed by Uniparts Olsen Inc. from October 17, 2008 until November 6, 2009 when he was discharged from employment. Mr. Foust worked as a full-time team leader in the company's production department and was paid by the hour. His immediate supervisor was Harlan Jewel.

Ms. Foust was discharged when he exceeded the permissible number of attendance infractions allowed under the company's "no-fault" point system. The claimant's most recent absence had taken place on October 30, 2009. At that time the claimant had called in giving the employer 24-hours advance notice of his impending absence for school.

At the time the claimant was rehired by the company in October of 2008, it was agreed that because the claimant was a full-time student he would be allowed to miss work for school purposes provided that he notified the company of his impending absence. The company had extended this option to other full-time employees and the arrangement was offered to Mr. Foust by Mr. Kresser, who was the hire agent for Uniparts Olsen Inc. at the time.

The claimant followed the agreement and provided notice to the employer of the dates that he would be absent due to school commitments. Subsequently the claimant was informed by his supervisor that he had been absent too often and was issued a written warning. The claimant reminded his supervisor of the agreement and requested that his supervisor bring the matter to the attention of the company's personnel department. It was agreed at that time that the claimant would be required to provide a minimum of 24-hours advanced notice of his impending absences for educational reasons. Mr. Foust did not receive a written warning but was next suspended. Mr. Foust complied with the requirements but nonetheless was discharged from employment on November 6, 2009, approximately one week after his most recent absence for school reasons.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes that when Mr. Foust was rehired by Uniparts Olsen Inc. it was specifically agreed that absences due to school commitments would not be held against the claimant, provided that he notify the employer in advance of the absences. Subsequently the claimant received a verbal warning and followed a reasonable course of action by reminding his supervisor of the specific agreement regarding absences due to educational pursuits. It was then agreed that the claimant would provide at least 24-hours advance notice to the employer of each impending absence. Although Mr. Foust complied, he nonetheless was discharged for what the employer considered to be excessive absenteeism on November 6, 2009.

Based upon the specific agreement in effect between the parties, Mr. Foust was reasonable in his belief that absences properly reported for educational pursuits would not be held against him. Intentional misconduct has not been shown. Benefits are allowed.

DECISION:

The representative's decision dated December 2, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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