

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOUIS C TAYLOR**  
Claimant

**APPEAL NO. 09A-UI-18315-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 11/08/09**  
**Claimant: Appellant (1)**

Section 96.5-2-A -- Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 30, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 15, 2010. Employer participated by Abby Meester, Human Resources Assistant; Jay Willsher, Regional Vice President; and Mary Dvorak, Manager ESD/MSA. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Abby Meester and the testimony of Mary Dvorak.

**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 general hospital located in Waterloo, Iowa. The claimant was hired on November 3, 2008, as a full-time housekeeper. He was terminated on November 6, 2009, for poor productivity and poor attendance. The employer has a four step disciplinary process. When an employee reaches step four, termination results. The claimant reached step three on September 30, 2009. He was given a one-day suspension on that date for taking an extra break and poor production, which essentially means that he had not done the job duties to which he had been assigned. He had received prior warnings for taking extra breaks and leaving the work area without supervisory approval. In addition, he accumulated numerous tardies because he would come to work without his badge. All employees were required to wear a badge and if an employee came to work without a badge, he or she had to return home. All employees knew that if they had to go home and get their badge, a tardy would be assessed.

On October 31, 2009, the claimant did not check in or out at work using his badge. He was there for a short time but he did not wax the floors as he was required to do. This was

considered to be insubordination. On November 5, 2009, the claimant was again late. The decision was made to terminate the claimant's employment.

### **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 on form misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absenteeism includes tardiness and leaving early. Insubordination, which the continued failure to follow reasonable instruction, is another form of misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was habitually late, usually due to his refusal to bring his badge to work and having to return home to get it. In the final incident that led to termination, the claimant apparently came to work without his badge and did not clock in or out. He was supposed to wax the floors and he worked on only a small part of his job. He took excessive breaks and left his work area without permission. A reasonable inference from the evidence is that claimant deliberately chose not to follow reasonable work rules given by the employer. His repeated violations show a pattern of conduct that evinces a disregard for the employer's interests. Misconduct has been established. Benefits are denied.

**DECISION:**

The decision of the representative dated November 30, 2009, reference 01, is affirmed. 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 benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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