

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW VANDERBURG**  
Claimant

**APPEAL NO.: 07A-UI-07647-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN BLASTING AND COATING INC**  
Employer

**OC: 07-08-07 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 2, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 27, 2007. The claimant participated in the hearing. Larry Merrill, Jr., Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time apprentice for Allen Blasting and Coating from March 2007 to June 28, 2007. He was discharged for three attendance occurrences. The employer's policy states that the first occurrence results in a verbal warning in writing, a second occurrence results in a written warning and a third occurrence results in termination. The claimant was five minutes late April 30, 2007, and received a verbal warning in writing (Employer's Exhibit One). He was absent because of family problems June 20, 2007, and called the employer to say he would be late but did not show up or call the employer back and received a written warning (Employer's Exhibit Two). On June 28, 2007, he called to say he would be five minutes late and the employer terminated his employment at the end of the day (Employer's Exhibit Three).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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 claimant was five minutes late on two occasions and was absent one day after he called to say he would be late but failed to call back or show up for work. The last absence was a five minute tardy and while the claimant did violate the employer's policy the administrative law judge cannot conclude that his actions rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The August 2, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css