

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY T DECK
Claimant

APPEAL NO: 09A-UI-06112-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST ACADEMY LLC
Employer

OC: 03/15/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Midwest Academy, L.L.C. (employer) appealed a representative's April 7, 2009 decision (reference 01) that concluded Anthony T. Deck (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 15, 2009. The claimant participated in the hearing. Mary Otu of PeopleSystems appeared on the employer's behalf and presented testimony from four witnesses, Tiffany Kahn, Jared Stewart, Corey McCandless, and Allen Cline. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 4, 2006. He worked full time as a night watch in the boys' wing of the employer's private boarding school for troubled youth. His normal schedule was 9:00 p.m. to 7:00 a.m. on a rotating schedule. His last shift of work was the shift that began at 9:00 p.m. on March 11 and was scheduled to end at 7:00 a.m. on March 12, 2009. The employer discharged him on March 12, 2009. The stated reason for the discharge was clocking out early without approval or notice to his supervisor at 1:37 a.m. Before leaving he had informed the night watch supervisor on the girls' wing that he was leaving as he did not feel well, but he did not contact his supervisor, Mr. Stewart. He further had advised that he spoken to Mr. Cline, a night watch in the treatment area, and reported that Mr. Cline had agreed to also cover the boys' wing; however, while the claimant had spoke to Mr. Cline, in fact Mr. Cline had indicated to the claimant that he could not cover the claimant's wing.

The claimant had previously been told that if he was going to be absent from work he needed to speak directly to Mr. Stewart. On January 13, 2009 the claimant had been warned about missing work without speaking to Mr. Stewart. On January 23, 2009 the issue was again addressed in a performance evaluation. On September 24, 2008 the claimant had been given a suspension for an incident where he had left work early, shortly after midnight, without informing his supervisor, even though he had informed a supervisor on the girls' wing.

The claimant established a claim for unemployment insurance benefits effective March 15, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,395.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Cosper, supra. However, the partial absence through early departure in this matter was not properly reported, nor was an acceptable reason provided to excuse the failure to properly report the absence. The claimant had been previously warned his job was in jeopardy if he failed to make proper reports to his supervisor, including when he left early. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant's repeated failure to follow the instruction shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's April 7, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 15, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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