

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COREY M GANT
Claimant

APPEAL NO. 07A-UI-09344-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A B C O ENGINEERING CORPORATION
Employer

**OC: 10/01/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Corey M. Gant (claimant) appealed a representative's September 27, 2007 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from A B C O Engineering Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2007. The claimant participated in the hearing. Janet Orr appeared on the employer's behalf. 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 June 4, 2007. He worked full time as a welder/fabricator trainee in the employer's farm equipment manufacturing facility. His regular work schedule was Monday through Friday 6:30 a.m. to 3:00 p.m. His last day of work was August 30, 2007. The employer discharged him on that date. The reason asserted for the discharge was excessive tardiness.

The claimant had been 35 minutes late on July 10, 55 minutes late on August 7, 2 minutes late on August 8, and 15 minutes late on August 23. The occurrences were either due to oversleeping or other personal matters. After each of these occurrences, he was given a verbal warning by the employer's president; on August 23 he was told that if he had further occurrences, he would likely be discharged. On August 29 the claimant was 13 minutes late because he overslept. He believes that he overslept because his then-girlfriend who lived in the home with him, as well as some other friends, had turned off his alarm; he believes this because when he discovered he had overslept, she had laughed, and because she was already mad at him for something else.

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.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Tardies are treated as absences for purposes of unemployment insurance law. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The presumption is that oversleeping is generally within an employee's control. Higgins, supra. The claimant has not established that the final incident here was not reasonably within his control. He has not established that for a fact the former girlfriend did turn off the alarm before it went off; and further, if she was angry enough at him that he would believe she would do such a thing, he should have taken more

precaution such as not allow her to stay in the house or to ensure no one could have access to his alarm so as to be able to tamper with it. The claimant's final tardy was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future tardies could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 27, 2007 decision (reference 03) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 30, 2007. This disqualification continues until he 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw