

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN D ECHOLS

Claimant

APPEAL 19A-UI-07034-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIEMENS WIND POWER INC

Employer

OC: 08/04/19

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ryan Echols (claimant) appealed a representative's August 21, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Siemens Wind Power (employer) for repeated tardiness in reporting for work after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 27, 2019. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left two messages for the employer but it did not respond before the hearing closed.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 2, 2018, as a full-time overhead crane operator. He received the employer's policies which included the attendance policy. If an employee accrued five attendance points, he would be terminated.

The employer knew the claimant had a disability at the time he was hired. Two fingers in each hand functioned and he could not form a grip. He had no nerves in the back of his left leg below his knee. When he awoke, it took time for feeling to be restored to his left leg.

The employer issued the claimant two written warnings for tardiness. It did not warn him of termination. On July 11, 2019, the claimant was at work on time but punched in one minute late. As of July 11, 2019, the claimant had five attendance points. On July 29, 2019, the employer terminated the claimant for tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The final instance of tardiness occurred on July 11, 2019. The employer terminated the claimant more than two weeks later on July 29, 2019. The termination was too remote from

the incident. The employer did not participate in the hearing and was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 21, 2019, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs