

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT A MULDER**  
Claimant

**APPEAL NO. 08A-UI-07459-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 07/20/08 R: 03  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated August 15, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 2, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Ken Leibold participated in the hearing on behalf of the employer with a witness, Larry Jacobsen.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a cafeteria worker from June 10, 2004, to July 25, 2008. The claimant was informed and understood that under the employer's work rules, employees were subject to discharge for any infraction after receiving three warnings.

The claimant received a first level warning on May 13, 2008, and a second level warning on June 23, 2008. The claimant received a one-day suspension and a third level warning on June 30, 2008, for making rude comments to coworkers. He was informed that he would be discharged for any further infractions.

The claimant was 15 minutes late for work on July 11 and 32 minutes late on July 17. On July 17, 2008, the claimant's supervisor required to claimant to sign a late report form. He counseled the claimant about his tardiness and asked if the claimant wanted to change a start time. The claimant stated that he did not. The claimant was 22 minutes late on July 21, 2008, because he overslept.

On July 25, 2008, the employer discharged the claimant based on his tardiness and prior record of discipline.

The claimant filed for and received a total of \$1,412.00 in unemployment insurance benefits for the weeks between July 20 and August 23, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Jacobsen's testimony that he had spoke to the claimant about his tardiness on July 17 is more credible than the claimant's testimony that the conversation did not take place until after the claimant's final instance of tardiness. The claimant's excessive tardiness after being warned was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

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 to the Agency.

**DECISION:**

The unemployment insurance decision dated August 15, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise

eligible. 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 to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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