

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOREY M WICKEY
Claimant

APPEAL NO. 10A-UI-12031-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURLYS FOODS
Employer

**OC: 07/25/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated August 20, 2010, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 12, 2010. Claimant participated personally. The employer participated by Leticia Cvetnich, Human Resource Assistant; Minnie Shroeder and Keith Ahlers.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Torey Wickey was employed by this company from July 1, 2010 until July 21, 2010 when he was discharged from employment. Mr. Wickey worked as a full-time general laborer and was paid by the hour. His normal working hours were 6:30 a.m. until 3:00 p.m.

The claimant was discharged based upon the employer's belief that he had reported to work late on the morning of July 21, 2010. The claimant was observed that morning attempting to clock in. Mr. Wickey had to return to his vehicle to obtain his electronic ID card. The claimant clocked in at approximately 6:26 a.m. The employer believed that the claimant had not clocked in sufficiently early to be on the production line and ready to perform services for the company at his 6:30 a.m. starting time. Because this was the third attendance infraction within 90 days, the claimant, as a probationary employee, was subject to discharge from employment.

It is the claimant's belief that he did not clock in or report to the production line late on July 21, 2010. It is the claimant's belief that his discharge was related to an earlier injury that he had reported.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits.

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(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The evidence in the record establishes the claimant was discharged based upon the employer's belief that he had reported to work late on three occasions within his initial 90-day probationary period of employment. As a probationary employee, Mr. Wickey was subject to a more strict standard of attendance. That standard of attendance expectations was not applied to employees who had passed the 90-day probationary period. The administrative law judge finds based upon the evidence in the record that the claimant's lack of attendance or lack of punctuality did not rise to the level of intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. While the employer may impose stricter

standards on probationary employees for their own purposes, the criteria used in determining whether a claimant is eligible to receive unemployment insurance benefits falls within the definition of misconduct adopted by the Iowa Supreme Court. Misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown in this case. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 20, 2010, reference 02, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs