

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY R HARTGRAVE
Claimant

APPEAL NO. 11A-UI-03939-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BLESSING INDUSTRIES
DECKER ACQUISITION CORP**
Employer

**OC: 07/04/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 18, 2011, reference 03, which denied unemployment insurance benefits. After due notice, a hearing was held in Decorah, Iowa on June 29, 2011. Claimant participated personally. The employer participated by Ms. Kayleen Schott, Human Resource Director.

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: Anthony Hartgrave was employed by Blessing Industries from October 11, 2010 until February 3, 2011 when he was discharged for exceeding the permissible number of attendance infractions allowed under established company policy. Mr. Hartgrave worked as a full-time welder and was paid by the hour. His immediate supervisor was Louis Miller.

Mr. Hartgrave was discharged on February 3, 2011 because he had exceeded the permissible number of attendance infractions on January 28, 2011 when he had reported to work one hour late. Mr. Hartgrave was aware of the company's attendance policy and had received a warning and three-day suspension for attendance issues on December 7, 2010. The claimant had also been verbally reminded of his excessive absenteeism and tardiness on December 10, 2010.

It is the claimant's position that following a motorcycle accident that had occurred in August 2010 he has cognitive problems and at times has experienced difficulty in organizing himself in the morning. At the time of his termination, Mr. Hartgrave did not bring to the attention of the employer any medical issues that caused him to be tardy nor did the claimant provide any medical documentation to the employer following his release to return to work that took place after his motorcycle accident. Claimant had been initially hired on August 16, 2010 and rehired by the company following his motorcycle accident.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

Iowa Code § 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.

No aspect of the contract for employment is more basic than the right of an employer to expect employees will appear for work on the day and hour agreed upon. A recurrent failure of that obligation shows a substantial disregard for the employer's interest and thus may justify a finding of misconduct in connection with the employment.

In the case at hand, Mr. Hartgrave was aware of the company's attendance policy and was aware that he could be discharged if he exceeded the permissible number of attendance infractions allowed under the policy. Mr. Hartgrave had returned to employment following his serious motorcycle accident. The claimant first worked on a limited basis but subsequently was fully released by his physician. Mr. Hartgrave indicated no medical condition that prevented him from arriving to work when scheduled and presented no medical evidence to the employer at the time of his discharge.

The claimant was discharged after he had been most recently warned and suspended on December 7, 2010 and then exceeded the permissible number of attendance infractions on

January 28, 2011 when he reported to work one hour late. The claimant provided no explanation at the time for his late arrival.

Although sympathetic to Mr. Hartgrave's plight, the administrative law judge must nevertheless rule that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated March 18, 2011, reference 03, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs