

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFTON WEST
Claimant

APPEAL NO: 09A-UI-16735-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 10-04-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 11, 2009. The claimant participated in the hearing. Jacque Finkral, Retention Coordinator, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production laborer for Advance Services last assigned to Allside Window Company from April 21, 2009 to October 2, 2009. His hours were 6:00 a.m. to 2:30 p.m. On September 23, 2009, he reported for work at 7:30 a.m. He believed he had injured his back at work but did not want to fill out a first report of injury because his supervisor explained he would not be paid for the first week he was off if he was taken off work and the claimant testified he needed the money to pay his bills. On September 29, 2009, he was absent for personal reasons but does not recall the specific reason he was gone. On September 30, 2009, he reported for work at 10:00 a.m. because his son had a doctor's appointment. He called the employer and the client to report each of those absences or incidents of tardiness. On October 3, 2009, the employer listed the claimant as a no-call/no-show. The claimant testified he called in around 5:00 a.m. to leave a message but may have entered the numbers on the answering machine incorrectly and should have called back to make sure he did it right. The employer's policy allows one no-call/no-show before termination occurs and as a result the claimant was discharged from his employment October 5, 2009

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant had two incidents of tardiness due to medical issues and properly reported each one as well as his absence September 29, 2009. He testified he called in to report his absence October 3, 2009, but may have hit the wrong buttons on the phone and did not call back to make sure he did it correctly. Two incidents of reported tardiness due to medical issues and one reported absence in about five months is not excessive. While the claimant was a no-call/no-show October 3, 2009, that does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 27, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css