

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMMY B PETTIGREW
Claimant

L A LEASING INC
Employer

APPEAL NO. 14A-UI-03608-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 28, 2014, reference 05, that held the claimant was not discharged for misconduct on March 12, 2014 and benefits are allowed. A hearing was held on May 13, 2014. The claimant participated. Maria Mays, Risk Administrator, and Julie White, Account Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked on assignment at Wilton Precision Steel (WPS) as full-time general labor from December 19, 2013 to March 12, 2014. Unbeknownst to claimant, WPS has an attendance point system for absences.

The employer issued claimant written disciplines for absences through February 2014. The warnings do not advise claimant how many points he has accumulated and how close he is to the 60-point termination threshold.

Claimant missed work due to car trouble on March 11/12 and WPS/employer ended the assignment. The termination document states claimant is at sixty points. Claimant did not sign for the termination until he received his final paycheck on March 20. Although the employer was willing to consider claimant for other assignments, he was not offered any further work.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes employer failed to establish misconduct in the discharge of the claimant on March 12, 2014, for excessive "unexcused" absenteeism.

The employer terminated claimant based on its assignment/WPS policy not its own. Claimant never received a WPS attendance policy and he had no prior warning he was accumulating points toward an unknown threshold of 60 points for termination. Since claimant did not complete the assignment due to employment termination, Iowa Code section 96.5-1-j does not apply. Job disqualifying misconduct is not established.

DECISION:

The decision of the representative dated March 28, 2014, reference 03, is affirmed. The claimant was not discharged for misconduct in connection with employment on March 12, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css