

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DARREL L JONES JR
109 W MAIN
PROMISE CITY IA 52583**

**BLOOMFIELD FOUNDRY INC
PO BOX 200
BLOOMFIELD IA 52537-0200**

**Appeal Number: 04A-UI-02399-RT
OC: 02/08/04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Darrel L. Jones, Jr., filed a timely appeal from an unemployment insurance decision dated March 2, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on March 24, 2004, with the claimant not participating. Jack Matheny, Human Resources, participated in the hearing for the employer, Bloomfield Foundry, Inc. Although the claimant did call in a telephone number initially where he could be reached for the hearing, the claimant called and spoke to the administrative law judge on March 9, 2004 at 11:37 a.m. Initially, the claimant asked that the hearing be rescheduled because he was returning to work. The administrative law judge informed Mr. Jones that he would consider rescheduling the hearing, but a hearing would have to be held at some point. Mr. Jones stated that his hours were 6:00 a.m. until he got done and he could not count on when he would be finished with work. The administrative law judge

informed the claimant that he could participate by written statement and the claimant indicated that he would do so. The administrative law judge informed the claimant that if he changed his mind he needed to call in a telephone number where he could be reached for the hearing. There was a telephone number where the claimant could be reached and the administrative law judge called that number at 1:02 p.m. for the hearing. The claimant was not there but the administrative law judge spoke to the claimant's wife, who informed the administrative law judge that the claimant would not be participating in the hearing. The claimant's written statement in lieu of participation was marked as Department Exhibit One and admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full time Molder/laborer from August 29, 2003 until he was discharged on February 5, 2004 for poor attendance. On February 5, 2004, the claimant was tardy 16 minutes because he overslept. He properly reported his tardy. The employer has a rule or policy that provides that an employee who is going to be absent or tardy must notify the employer before the start of the employee's shift. The claimant's shift began at 6:00 a.m. On February 4, 2004, the claimant was absent because he had to take his son to the doctor and he properly reported this absence. The claimant did live in Promise City, Iowa, which is 80 miles from Des Moines, Iowa and the claimant had to take his son to Des Moines, Iowa. On January 30, 2004, the claimant was tardy 35 minutes because he overslept and although he did call the employer it was not timely. On January 13, 2004, the claimant was tardy 12 minutes because he was "running late." The claimant did call this in, but called it in late. On January 12, 2004, the claimant was absent for personal illness and this absence was properly reported. On January 9, 2004, the claimant was tardy 13 minutes and the employer had no reason why because there was no record of this tardy. The employer's witness, Jack Matheny, Human Resources, credibly testified that the claimant probably had not called in that tardy. On January 8, 2004, the claimant was absent and provided no reason. Mr. Matheny testified that the claimant again probably did not call in this absence since there was no reason. On January 5, 2004, the claimant was tardy 7 minutes without reason and this was not properly reported. The claimant also had other tardies in December 2003 for similar unexcused reasons. If the weather was bad the employer did not include tardies or absences for bad weather and are not included herein. Mr. Matheny credibly testified that the employer overlooked tardies and absences for bad weather unless most of the employees are able to make it to work.

The claimant received at least six verbal warnings for his attendance and then a written warning on December 2, 2003 indicating that further violations could result in his discharge. The claimant also received a written warning on January 13, 2004 for his attendance.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 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.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. The employer's witness, Jack Matheny, Human Resources, credibly testified that in January and February 2004, the claimant had five tardies, which were not for reasonable cause. At least two of the tardies were because the claimant overslept and one was because the claimant was "running late" and two were without reason. Mr. Matheny also testified credibly that the claimant had other tardies in December that were not for reasonable cause. Some of these tardies were properly reported and others were reported but not timely and some were not reported at all. The claimant did

have absences also during that period of time as set out in the Findings of Fact, but these absences were for reasonable cause and properly reported except possibly for the absence on January 8, 2004. The claimant received a number of verbal warnings about his attendance and then two written warnings on December 2, 2003 and January 13, 2004.

The claimant stated in his written statement in lieu of participation that he had doctor's excuses for his days missed and for the late days he had severe weather and roads were almost impossible to travel on those mornings. The administrative law judge concludes that claimant's absences were for reasonable cause and properly reported and not excessive unexcused absenteeism. However, the administrative law judge is constrained to conclude on the evidence here that claimant's tardies were not for reasonable cause and most not properly reported and are excessive unexcused absenteeism. Mr. Matheny credibly testified that tardies for bad weather are overlooked by the employer and were not included in the claimant's tardies. The claimant must have informed the employer that on at least two tardies that he overslept and on one he was "running late" because that is what Mr. Matheny had in the records. These are not for reasonable cause.

Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude that the claimant's tardies were excessive unexcused absenteeism and disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated March 2, 2004, reference 01, is affirmed. The claimant, Darrel L. Jones, Jr., is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

kjf/kjf