

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN R GATES**

Claimant

**APPEAL NO: 13A-UI-00280-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATERPILLAR ELKADER LLC**

Employer

**OC: 11/25/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

John R. Gates (claimant) appealed a representative's January 9, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Caterpillar Elkader, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2013. The claimant participated in the hearing. Gail Lindley appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 13, 2012. He worked full time as a welder on the first shift at the employer's Elkader, Iowa plant. His last day of work was November 30, 2012. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer's attendance policy provides for discharge if an employee reaches six attendance occurrences. By July 2 the claimant had reached five occurrences by having an absence for car problems in March, an absence for illness in May, and multiple occurrences of tardies, primarily due to oversleeping, including being an hour tardy on July 2. He was given a three-day suspension at that time.

His final occurrences were an absence on November 21 due to car problems, and a tardy on each of November 26 and November 28 due to oversleeping. As a result of these additional occurrences after the five-point suspension the employer discharged the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility, including issues relating to transportation, are not excusable. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984); *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins*, supra. The presumption is that oversleeping is generally within an employee's control. *Higgins*, supra. The claimant's final occurrences were not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's January 9, 2013 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 30, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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