

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTEN C VANVACTER
Claimant

APPEAL NO. 10A-UCFE-00039-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEPARTMENT OF HOMELAND
Employer

OC: 07/25/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 21, 2010, reference 01, that held he was discharged for repeated tardiness in reporting for work on July 12, 2010, and that denied benefits. A telephone hearing was held on December 9, 2010. The claimant did not participate. Kim Bakker, Assistant Federal Security Director Fort Dodge Airport; Danise Daville, Assistant Federal Security for Iowa; and Tony Gotto, HR Specialist, participated for the employer. Employer Exhibits 1 through 12 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on August 5, 2007, as a part-time Security Transportation Officer assigned to the Fort Dodge Airport. The claimant received the employer policies that include provisions for employee discipline.

The employer issued letters of counseling to claimant on October 4, 2007; February 28, 2008; and November 3, 2008, and a SMART Agreement on September 19, 2008 due to a tardiness problem in reporting for work shift(s) on time.

The employer issued claimant a letter of reprimand on July 31, 2009, and a final warning with a three-day suspension on September 18, 2009 for violation of the employer's attendance policy due to a tardiness problem. The final warning put claimant on notice that a further tardiness incident would result in employment termination.

The claimant was 28 minutes late for the start of his work shift on May 29, 2010. The employer provided the claimant with a pre-discipline decision discussion on June 8, and he offered his reason for the tardiness was he had overslept. The employer reviewed with claimant his disciplinary history with a recommendation of a seven-day suspension up to and including employment termination due to tardiness, failure to give one-hour notice of missing work prior to the start of his shift, and absence without leave.

On June 15, the employer issued claimant a Notice of Removal for his most recent incident of tardiness in light of his disciplinary attendance history/policy violations. Employer gave claimant the right to reply to the removal within seven calendar days. Claimant replied on July 1. On July 12, the employer terminated claimant for his May 29 tardiness in light of repeated warnings and discipline for the same issue.

The claimant was not available at the phone number he provided when called for the hearing.

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.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on July 12, 2010, for repeated tardiness and employer attendance violations after receiving disciplinary warnings.

The claimant knew the employer attendance and disciplinary policy due to prior counseling and warnings with a final warning/suspension, and his repeated violation for the same offenses constitutes job-disqualifying misconduct.

DECISION:

The department decision dated September 21, 2010, reference 01, is affirmed. The claimant was suspended on June 8, and discharged for misconduct on July 12, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw