

|->

Title 22@ Social Security

|->

Division 1@ Employment Development Department

|->

Subdivision 1@ Director of Employment Development

|->

Division 1@ Unemployment and Disability Compensation

|->

Part 1@ Unemployment Compensation

|->

Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

|->

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

|->

Section 1256-40@ Discharge for Misconduct -Tardiness

1256-40 Discharge for Misconduct -Tardiness

(a) Scope. This section relates to discharge for misconduct in connection with one's most recent work due to single or repeated instances of tardiness in reporting to work. Section 1256-30 of these regulations sets forth general principles also applicable under this section.

(b)

Employee's Duty to Employer. The employee's obligation to arrive at work on time is an implied obligation which the employer does not have to set forth at the time of hire.

(c)

Tardiness as a Breach of the Employee's Duty. Tardiness breaches the standard of punctual behavior which the employer has the right to expect. Tardiness is misconduct if it results in a substantial breach and disregard of the duty owed to the employer and shows a willful or wanton disregard of and injures or tends to injure the employer's interests, such as any of the following circumstances: (1) Repeated inexcusable tardiness to work despite a recent warning that inexcusable tardiness may result in discharge. (2) An instance of inexcusable tardiness considered in conjunction with violations of other employer standards and prior reprimands or warnings for those violations. (3) A single instance of inexcusable tardiness which causes reasonably foreseeable substantial injury to the

employer's interests.

(1)

Repeated inexcusable tardiness to work despite a recent warning that inexcusable tardiness may result in discharge.

(2)

An instance of inexcusable tardiness considered in conjunction with violations of other employer standards and prior reprimands or warnings for those violations.

(3)

A single instance of inexcusable tardiness which causes reasonably foreseeable substantial injury to the employer's interests.

(d)

Excusable Tardiness. (1) The following circumstances do not establish a willful or wanton disregard of the employer's interests and are not misconduct:(A)

Occasional or isolated lapses of tardiness without previous reprimands or warnings, except as provided by subdivision (c) of this regulation. (B) Compelling reasons for tardiness regardless of the number of prior instances of tardiness, reprimands, or warnings. (2) If a claimant has a compelling reason for his or her tardiness, his or her discharge cannot be for misconduct, regardless of previous instances of tardiness or prior reprimands and warnings. Substantially compelling reasons outweigh a claimant's obligation to arrive at work on time regardless of the adverse effect on the employer's operations. Less compelling circumstances tend to show disregard of the employer's interests, if the tardiness adversely affects the employer's operations. Mere personal inconvenience, failure to allow ample traveling time to work, oversleeping, or missing the bus are not reasonable excuses for repeated tardiness. EXAMPLE 1. Minor Infraction--No Harm. Z's

employer expected Z to be at Z's post by 7:00 a.m. Z was required to punch in at

the time clock two to three minutes before 7:00. Z arrived at the post late on several occasions. The employer warned Z that tardiness would result in discharge. On the day Z was discharged, Z was ten to fifteen yards away from Z's post at 7:00. The employer's operations were not affected by Z's tardiness. Although Z had no justification for tardiness, the infraction was minor, and the conduct did not interfere with the employer's operations. Therefore, Z's conduct was not so unreasonable as to constitute misconduct.

EXAMPLE 2. Repeated Inexcusable Tardiness. Y was a storeroom manager for a hotel. Y's duties included opening the storeroom at 7:00 a.m. so that supplies could be obtained for various needs of the hotel. In the last year of Y's employ, Y reported to work late on several occasions, despite reprimands and warnings. Y's tardiness ranged from ten minutes to four and a half hours. The employer discharged Y for tardiness. Y's pattern of reporting late without reasonable excuse was a substantial breach of the duty owed to the employer and was a willful and wanton disregard of the employer's interest. Y was discharged for misconduct due to tardiness.

EXAMPLE 3. Repeated Inexcusable Tardiness. X was an offset press operator in charge of a three person crew. X's presence was necessary to prepare for the operation of the press. X was late for work on 47 occasions in seven months of employment. The employer warned X twice that continued tardiness would result in discharge. X was tardy several times after the second warning and for no justifiable reason. The employer discharged X for tardiness. X was discharged for misconduct due to tardiness, since X's conduct showed a substantial breach of the duty to be punctual and a willful and wanton disregard of the employer's interest.

EXAMPLE 4. Single Instance of Tardiness--Other Violations. W received permission to report to work one hour late. W reported in two and one-half hours late and had no compelling reason for tardiness. The employer immediately discharged W. Prior to the discharge, the

employer had reprimanded W for being absent from work without notifying the employer, taking longer lunch periods than authorized, leaving work early, and refusing to follow instructions. The first instance of W's tardiness when considered in conjunction with W's previous conduct showed a willful and wanton disregard of the employer's interests and the employee's duty and therefore was misconduct due to tardiness. EXAMPLE 5. Single Instance of Tardiness--Substantial Foreseeable Harm. T was a chemist responsible for operating controls to insert catalytic agents at several steps during a factory production process. The work could not proceed without the addition of the catalysts. T had never before been tardy at work but one day showed up 2 hours late to work without excuse, resulting in the loss of valuable production and the payment of wages to production workers for nonproductive time on line. The employer discharged T for this single instance of tardiness. T's discharge was for misconduct even though for only a single instance of tardiness not preceded by reprimands or warnings, since the substantial loss to the employer was foreseeable.

(1)

The following circumstances do not establish a willful or wanton disregard of the employer's interests and are not misconduct: (A) Occasional or isolated lapses of tardiness without previous reprimands or warnings, except as provided by subdivision (c) of this regulation. (B) Compelling reasons for tardiness regardless of the number of prior instances of tardiness, reprimands, or warnings.

(A)

Occasional or isolated lapses of tardiness without previous reprimands or warnings, except as provided by subdivision (c) of this regulation.

(B)

Compelling reasons for tardiness regardless of the number of prior instances of tardiness,

reprimands, or warnings.

(2)

If a claimant has a compelling reason for his or her tardiness, his or her discharge cannot be for misconduct, regardless of previous instances of tardiness or prior reprimands and warnings. Substantially compelling reasons outweigh a claimant's obligation to arrive at work on time regardless of the adverse effect on the employer's operations. Less compelling circumstances tend to show disregard of the employer's interests, if the tardiness adversely affects the employer's operations. Mere personal inconvenience, failure to allow ample traveling time to work, oversleeping, or missing the bus are not reasonable excuses for repeated tardiness. EXAMPLE 1. Minor Infraction--No Harm. Z's employer expected Z to be at Z's post by 7:00 a.m. Z was required to punch in at the time clock two to three minutes before 7:00. Z arrived at the post late on several occasions. The employer warned Z that tardiness would result in discharge. On the day Z was discharged, Z was ten to fifteen yards away from Z's post at 7:00. The employer's operations were not affected by Z's tardiness. Although Z had no justification for tardiness, the infraction was minor, and the conduct did not interfere with the employer's operations. Therefore, Z's conduct was not so unreasonable as to constitute misconduct. EXAMPLE 2. Repeated Inexcusable Tardiness. Y was a storeroom manager for a hotel. Y's duties included opening the storeroom at 7:00 a.m. so that supplies could be obtained for various needs of the hotel. In the last year of Y's employ, Y reported to work late on several occasions, despite reprimands and warnings. Y's tardiness ranged from ten minutes to four and a half hours. The employer discharged Y for tardiness. Y's pattern of reporting late without reasonable excuse was a substantial breach of the duty owed to the employer and was a willful and wanton disregard of the employer's interest. Y was discharged for misconduct due to tardiness. EXAMPLE 3. Repeated Inexcusable Tardiness. X was an offset press operator in charge of a three

person crew. X's presence was necessary to prepare for the operation of the press. X was late for work on 47 occasions in seven months of employment. The employer warned X twice that continued tardiness would result in discharge. X was tardy several times after the second warning and for no justifiable reason. The employer discharged X for tardiness. X was discharged for misconduct due to tardiness, since X's conduct showed a substantial breach of the duty to be punctual and a willful and wanton disregard of the employer's interest.

EXAMPLE 4. Single Instance of Tardiness--Other Violations. W received permission to report to work one hour late. W reported in two and one-half hours late and had no compelling reason for tardiness. The employer immediately discharged W. Prior to the discharge, the employer had reprimanded W for being absent from work without notifying the employer, taking longer lunch periods than authorized, leaving work early, and refusing to follow instructions. The first instance of W's tardiness when considered in conjunction with W's previous conduct showed a willful and wanton disregard of the employer's interests and the employee's duty and therefore was misconduct due to tardiness.

EXAMPLE 5. Single Instance of Tardiness--Substantial Foreseeable Harm. T was a chemist responsible for operating controls to insert catalytic agents at several steps during a factory production process. The work could not proceed without the addition of the catalysts. T had never before been tardy at work but one day showed up 2 hours late to work without excuse, resulting in the loss of valuable production and the payment of wages to production workers for nonproductive time on line. The employer discharged T for this single instance of tardiness. T's discharge was for misconduct even though for only a single instance of tardiness not preceded by reprimands or warnings, since the substantial loss to the employer was foreseeable.