

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JACOB D LANE**  
Claimant

**JENIFER J BADGER**  
Employer

**APPEAL NO. 22A-UI-16825-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/24/22  
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On September 6, 2022, Jacob Lane (claimant) filed a timely appeal from the September 6, 2022 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on April 9, 2022 for repeated tardiness in reporting for work. After due notice was issued, the appeal hearing started on September 29, 2022, recommenced on October 5, 2022 and concluded on October 24, 2022. Claimant participated. Jenifer Badger represented the employer. Exhibits 1 through 21, and A through PP were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jenifer Badger owns and operates ShineOn designs in Jefferson, Iowa. In September 2021, Jacob Lane (claimant) began his full-time employment. On September 21, 2021, following the interview, the employer sent the claimant the following text message:

Hi Jake, it's Jen Badger. It was very nice to meet you and talk about the opportunity. I don't like discussing pay in front of other employees. Sorry I didn't get to talk that over with you. The starting pay would be \$20 for all of the responsibilities outlined in our interview. I can't really offer benefits, but you do get the Christmas week off paid and I can be flexible in work schedule as needed. I like to keep a consistent schedule as much as possible but would allow you to make up time if would have to be gone. I run the store on Saturdays so there's time to make up hours there and eventually you'll have a key to come and go as you need. Let me know if you have any questions!

The claimant points to the above message as proof he had carte blanche to set his own work hours. However, communications between the party indicate an ongoing mutual understanding the claimant would report for work between 10:00 a.m. and noon.

As of October 15, 2022, Ms. Badger promoted the claimant to full-time Shop Manager.

At 8:34 a.m. on January 19, 2022, Ms. Badger sent the claimant the following text message: "Good morning, I need you to come in earlier today. I would prefer you be here no later than noon, but earlier if possible."

On January 20, 2022, Ms. Badger sent the claimant the following text message: "Hello, just checking in as I was hoping you could be here by noon from now on." See Exhibit 5.

Despite the employer's January 20 directive and earlier concerns the employer had raised about the claimant's late arrivals, the claimant was thereafter habitually late getting to work. The claimant was late for personal reasons unrelated to illness on January 25, 28 and 31, February 1, 9, and 24, March 3, 7, 8, 10, 11, 14, 15, 16, 18, 21, 22, 23, 24, 25, 28, 29 and 31, 2022. In most of these instances, the claimant was more than an hour late.

On March 30, 2022, the employer notified the claimant not to report for work on March 30, 2022 due to his late arrival on March 29, 2022. On March 31, 2022, one day after the employer imposed the one-day suspension, the claimant not only reported for work late, but also took an extended 75 minute lunch break to spend time with his mother and sister. The claimant returned to the workplace at 4:30 p.m. The claimant's extended lunch break occurred during a time when the claimant knew his assistant was at the workplace and was lacking guidance from the claimant.

The final absence that triggered the discharge occurred on April 5, 2022. On that day, the claimant left at 3:30 p.m. for what was supposed to be a 30 to 60-minute meal break. At 4:56 p.m., the claimant notified the employer he was at a gaming casino and would return to work when he was done playing the casino games he had won. The claimant returned to work at 5:30 p.m. The discharge followed on April 9, 2022.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for excessive unexcused absence. After the employer told the claimant on January 20, 2022 that she needed the claimant at work no later than noon, the claimant elected to be late for personal reasons 23 times between January 25, 2022 and March 31, 2022. The March 31, 2022 late arrival followed on March 30, 2022 one-day suspension. In addition, the claimant elected to return from lunch 15 minutes late on March 31 and at least an hour late on April 5, 2022. The final incident, wherein the claimant elected to go to and remain at a gaming casino during a time he was supposed to be at work, demonstrates a brazen disregard of the employer's interests. The claimant's pattern of conduct indicated a willful and wanton disregard for the employer's interests and constituted misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The September 6, 2022 (reference 01) decision is affirmed. The claimant was discharged on April 9, 2022 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

November 3, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.