

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CAMERON J HARMES**  
Claimant

**APPEAL NO. 22A-UI-02937-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE STORES COMPANY INC**  
Employer

**OC: 02/07/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant, Cameron Harmes, filed a timely appeal from the January 7, 2022, reference 02, 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 voluntarily quit on November 23, 2021 without good cause attributable to the employer by being absent three days in a row without notifying the employer. After due notice was issued, a hearing was held on February 28, 2022. The claimant participated. Thomas Kuiper of Equifax represented the employer and presented testimony through Kris Suit. Exhibit 1 was received into evidence.

**ISSUES:**

Whether the claimant was laid off, discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

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

The claimant was employed by Advance Stores Company, Inc. as a full-time Retail Parts Professional (RPP) from February 2021 until November 23, 2021, when the employer discharged him for attendance. The claimant did not quit. Rather, the employer deems absences without proper notice to be job abandonment. The claimant worked at the Advance Auto Parts store in Sioux City. Missy Dicus is General Manager of the Sioux City store and was the claimant's supervisor. If the claimant needed to be absent from the employment, the required that the claimant notify his supervisor at least one hour prior to the scheduled start of his shift. The employer had the claimant sign to acknowledge the policy at beginning of the employment and made the policy available to the claimant. The claimant was aware of the policy.

The final absence that triggered the discharge occurred on Saturday, November 20, 2021. On that day, the claimant was scheduled to work from 1:00 p.m. to close (9:30 p.m.) On Friday, November 19, 2021, the claimant had called the workplace and spoke to a non-supervisory Key Holder, Luke, to give notice that the claimant would be absent from work the following day. The

claimant asserts the absence was due to illness. Luke did not have supervisory authority over the claimant. When the claimant contacted Luke, Luke advised the claimant that the claimant was required to contact Ms. Dicus. The claimant did not contact Ms. Dicus to give notice of the absence.

The claimant had one prior absence. On June 19, 2021, the claimant was absent from work in connection with the need to euthanize his girlfriend's cat. The claimant contacted Ms. Dicus less than an hour prior to the start of the shift to give notice of his need to be absent. On June 21, 2021, Ms. Dicus issued an electronic final written warning to the claimant in connection with the absence without the required notice. The warning indicated that another similar incident would lead to termination of the employment.

### **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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The evidence in the record establishes a discharge for no disqualifying reason. On June 19, 2021 and November 20, 2021 the claimant was absent without proper notice to the employer. Both absences were unexcused absences under the applicable law. There were no other absences. The claimant's unexcused absences were not excessive. The claimant did not voluntarily quit. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The January 7, 2022, reference 02, decision is reversed. The claimant was discharged on November 23, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

March 11, 2022  
Decision Dated and Mailed

jet/kmj