IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER L HUFFMAN
Claimant

COVENANT MEDICAL CENTER INC
Employer

APPEAL NO. 15A-UI-12460-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/11/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jennifer Huffman filed a timely appeal from the November 2, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Huffman had been discharged on October 15, 2015; for excessive unexcused absences. After due notice was issued, a hearing was held on November 30, 2015. Ms. Huffman participated. Shelly Burton represented the employer and presented additional testimony through Missy Santman. Exhibits One through Four were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Huffman was employed by Covenant Medical Center, Inc., d/b/a Wheaton Franciscan Healthcare, as a full-time Nurse Facilitator until October 15, 2015; when the employer discharged her from the employment. Ms. Huffman's employment began in 1993. At the time of hire, Ms. Huffman was a Licensed Practical Nurse. In 2001, Ms. Huffman earned her Register Nurse license. Thereafter, she worked for the employer as a register nurse. In 2011, Ms. Huffman became a Nurse Facilitator. She then continued in the Nurse Facilitator position until the employment ended. Ms. Huffman's immediate supervisor toward the end of the employment was Shelly Burton, O.R. Manager. Ms. Huffman was responsible for the vascular surgery schedule. Her duties included preparing surgical instrumentation for surgeons. Because Ms. Huffman's role was to support the surgeons, she was required to "flex" her schedule to accommodate scheduled cases. Ms. Huffman was aware that given the nature of her position and duties it was important to be punctual in reporting for work. Ms. Huffman was aware that if she needed to be absent or late, the employer's policy required that she notify the employer at least two hours prior to her scheduled start time.

The final incident that triggered the discharge occurred on October 14, 2015. On that day, Ms. Huffman was scheduled to start at 9:00 a.m. Ms. Huffman overslept. When Ms. Huffman contacted Ms. Burton at 10:30 a.m., Ms. Burton told her not to come. Ms. Burton subsequently spoke to Ms. Huffman regarding the absence, Ms. Huffman told Ms. Burton that she had overslept.

The employer considered additional absences in making the decision to discharge Ms. Huffman from the employment. Ms. Huffman had been late for work for personal reasons on October 8 and 9, 2015. On October 8, she arrived at 8:55 a.m. for an 8:00 a.m. start time. On October 9, she arrived at 9:09 a.m. for a 9:00 a.m. start time. On October 4, 2015, Ms. Huffman was 30-minutes late reporting to the medical center because she had overslept. On that day, Ms. Huffman was a designated on-call Nurse Facilitator. Ms. Huffman had been properly notified the previously evening that she needed to appear at 7:00 a.m. to prepare for a procedure set for 8:00 a.m. Ms. Huffman arrived at 7:30 a.m. Ms. Huffman had also been late for personal reasons on August 5 and 6, 2015. On May 6, 2015, Ms. Huffman had been absent due to illness and had properly reported the absence. On September 17, Ms. Huffman had been absent due to a bonafide family emergency and had properly notified the employer of the absence.

In making the decision to end the employment, the employer also considered instances wherein Ms. Huffman failed to clock in. On September 29 and October 2, 2015, Ms. Huffman forgot to clock in upon her arrival. To clock in, Ms. Huffman would have to swipe her employee badge. Ms. Huffman knew that she was required to clock in upon her arrival at the workplace.

Ms. Huffman's absences occurred in the context of written warnings for attendance. The employer issued such warnings to Ms. Huffman on April 11, 2014, August 5, 2014, and February 13, 2015. In connection with the final warning, the employer advised Ms. Huffman that her employment was in jeopardy.

In July 2015, Ms. Huffman sought treatment for depression. After a short leave, Ms. Huffman was released to return to work. Ms. Huffman's doctor offered to support a request for leave under the Family and Medical Leave Act, but Ms. Huffman elected to return to work instead. Ms. Huffman's mental health issues did not prevent her from reporting for work on time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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 871 IAC 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 871 IAC 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 misconduct in connection with the employment based on excessive unexcused tardiness. The weight of the evidence does not support Ms. Huffman's belated assertion that her mental health issues were a factor in her repeated instances of tardiness. Ms. Huffman was a licensed nursing professional with a very important role to play in connection with surgical procedures. Despite being fully aware of her responsibilities in preparing for surgical procedures, Ms. Huffman was late for work for personal reasons four times between October 4 and October 14, 2015. One need not look back any further to see excessive unexcused absences because these four are more than enough to establish misconduct in connection with the employment. Ms. Huffman's excessive unexcused absences occurred in the context of repeated warnings for attendance, including a specific notice that her employment was in jeopardy.

Because Ms. Huffman was discharged for misconduct, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Huffman must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 2, 2015, reference 01, decision is affirmed. The claimant was discharged on October 15, 2015 for misconduct in connection with the employment; for excessive unexcused absences. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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