IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SIEFKEN, HOLLY, M
Claimant

ASSOCIATED MATERIALS LLC
Employer

APPEAL NO. 12A-UI-12850-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/20/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 16, 2012, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 28, 2012. Claimant Holly Siefken participated. Mark Grenko, Human Resources Manager, represented the employer. Exhibits One through Four were received into evidence.

ISSUE:

Whether Ms. Siefken separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Holly Siefken was employed by Associated Materials as a full-time production lead from March 2012 until September 28, 2012, when the employer discharged her for attendance and for allegedly walking off the job. Ms. Siefken's immediate supervisor was Chris Conaway. During the week that included September 26, 2012, Ms. Siefken was ill. Ms. Siefken reported to work despite being ill. Ms. Siefken requested of Mr. Conaway that she be allowed to leave work at 12:30 p.m. on September 26. Mr. Conaway had approved a departure at that time, provided there was another production lead to cover Ms. Siefken's duties. Ms. Siefken did not leave work at 12:30 p.m. on September 26. That was because the production lead from another area, the lead who was supposed to cover Ms. Siefken's duties in her absence, was not available to take over at that time. Ms. Siefken stayed until 2:30 p.m. At that point she left work after receiving assurances from the other production lead and other co-workers that they could cover her duties during her absence. Because Ms. Siefken left before the other production lead was available to fully take over her duties, the employer deemed Ms. Siefken's departure from the workplace a voluntary quit under the employer's attendance policy. Ms. Siefken had no intention to quit the employment and did not say or do anything to indicate such an intent before she left on September 26. Production continued until approximately 4:30 p.m. that day. While the employer indicates that Ms. Siefken's regular quit time was 2:30 p.m., Ms. Siefken was ordinarily expected to stay until production was finished, whenever that might occur. Ms. Siefken appeared for work the next day as scheduled. At the end of the shift, the employer asserted that

she had quit the previous day by walking off the job. The employer then ended the employment.

The employer has a written attendance policy that indicates that, "Walking off the job without permission is a voluntary quit, no exceptions!" Ms. Siefken, as a production lead, was responsible for enforcing the attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record does not support the employer's assertion that Ms. Siefken can voluntarily quit or that she walked off the job. The administrative law judge notes that the employer did not present any testimony from Mr. Conaway, including any testimony concerning the discussion he had with Ms. Siefken regarding her request for time off on September 26. The employer also did not present any testimony from the other production lead or anybody else who might have been part of the discussion before Ms. Siefken left work on September 26. Ms. Siefken did not do or say anything before she left on September 26 to indicate that she intended to quit the employment. Ms. Siefken left on September 26 with the understanding that she had at least conditional permission from Mr. Conaway to leave work early that day. She left only after she had assurance from others in her area that they could cover her duties. She left due to illness. Ms. Siefken's return to work the next day, and the employer's decision to allow her to work an entire shift before taking up the matter of her departure the previous day, both support the conclusion that there was no voluntary quit. The evidence establishes that the employer discharged Ms. Siefken from the employment based on a single absence.

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(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.

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).

While a disqualifying discharge for attendance usually requires *excessive unexcused* absences, a single unexcused absence may in some instances constitute misconduct in connection with the employment that would disqualify a claimant for benefits. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). In Sallis, the Supreme Court of Iowa set forth factors to be considered in determining whether an employee's single unexcused absence would constitute disqualifying misconduct. The factors include the nature of the employee's work, dishonesty or falsification by the employee in regard to the unexcused absence, and whether the employee made any attempt to notify the employer of their absence.

The employer has presented insufficient evidence to establish that the departure on September 26 was an unexcused absence. The employer testified that Ms. Siefken's ordinary quit time would be 2:30 p.m., which corresponds to the time Ms. Siefken left on September 26. The employer has failed to present sufficient evidence to rebut Ms. Siefken's assertion that she had permission to leave early that day. The employer has failed to present sufficient evidence to rebut Ms. Siefken's assertion that she actually stayed two hours longer than she was supposed to that day. The employer has also failed to rebut Ms. Siefken's assertion that she left due to illness. In the absence of proof of an unexcused absence, the evidence fails to establish misconduct in connection with the employment. The administrative law judge notes that even if the evidence had established an unexcused absence on September 26, that single unexcused absence would not be sufficient to establish misconduct in connection with the employment that would disqualify Ms. Siefken for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Siefken was discharged for no disqualifying reason. Accordingly, Ms. Siefken is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's October 16, 2012, reference 03, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/bjc