

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARCHIE L JONES**  
Claimant

**APPEAL NO. 13A-UI-12263-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHENHALL'S STAFFING SERVICES INC**  
Employer

**OC: 10/13/13**  
**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 31, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 21, 2013. Claimant Archie Jones participated and presented additional testimony through Martha Blanton. Mike Gowdy represented the employer.

**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: The employer, Chenhall's Staffing Services, Inc., is a temporary employment agency. Archie Jones last performed work for the employer in a full-time temporary work assignment at Sears, a company that manufactures seats for John Deere. Mr. Jones began the assignment in May 29, 2013 and last performed work in the assignment on July 31 2013. Mr. Jones' work hours in the assignment were 6:00 a.m. to 2:30 p.m. Monday through Friday. Chenhall's Staffing lacked a written attendance policy. If Mr. Jones needed to be absent from the assignment, the employer expected to telephone Chenhall's Staffing to give as much notice as was possible. If no one answered the telephone, it was acceptable to the employer if Mr. Jones left a voice mail message. The employer did not require that Mr. Jones notify Sears directly of his need to be absent.

Mr. Jones was absent from his shift on Thursday, August 1, 2013. At 4:14 a.m. that morning, Mr. Jones left a voice mail message for the employer indicating that he had gone to Chicago due to an emergency and would be back to work the following Monday. Mr. Jones' mother had been hospitalized in connection with multiple chronic illnesses and required Mr. Jones' help with daily activities of living. Mike Gowdy of Chenhall's Staffing tried to reach Mr. Jones by telephone on August 1, but Mr. Jones did not answer his phone.

On August 2, 2013, Mr. Jones telephoned Chenhall's Staffing several times beginning at 4:50 a.m. and left multiple messages before he called just before 8:00 a.m. and spoke with Mr. Gowdy. Mr. Jones told Mr. Gowdy that his mother was in the hospital, that she was not doing well, but that she would be coming home on Sunday evening. Mr. Jones told Mr. Gowdy that his mother suffered from diabetes and high blood pressure. Those were just two of the several chronic diseases that his mother suffered from. His mother also suffers from colon cancer. Mr. Gowdy decided that Mr. Jones appeared not to know specifically what was wrong with his mother and that he was vague about her illnesses. Mr. Jones did not know all the specifics about his mother's health issues because she did not necessarily want him to know or keep him informed. Mr. Gowdy told Mr. Jones that he was discharged from the assignment and the employment.

In making the decision to discharge Mr. Jones, Mr. Gowdy also considered Mr. Jones' absence from the assignment on July 29, 2013. On that day, Mr. Jones was absent due to illness and properly notified the employer.

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

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). 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 that the employer discharged Mr. Jones based on absences that were excused absences under the applicable law. The weight of the evidence indicates that Mr. Jones was absent due to illness on July 29, 2013 and properly notified the employer. The weight of the evidence indicates that Mr. Jones was absent on August 1 and 2 due to a bonafide family emergency, his mother's hospitalization and chronic illness and that Mr. Jones properly notified the employer both days. Absences that are excused absences under the applicable law cannot serve as a basis for disqualifying a claimant for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Jones was discharged for no disqualifying reason. Accordingly, Mr. Jones is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The Agency representative's October 31, 2013, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs