

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R HAMRE
Claimant

APPEAL NO. 12A-UI-00665-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 12/11/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 10, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 14, 2012. Claimant David Hamre participated. Ben Wise, hiring supervisor, 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: David Hamre was employed by Cargill Meat Solutions as a full-time production worker from July 2011 until December 13, 2011, when the employer discharged him for attendance. The incident that prompted the discharge occurred on December 12, 2011, when Mr. Hamre left work early without notifying a supervisor. Mr. Hamre notified a coworker instead. Mr. Hamre was aware that he needed to notify a supervisor if he needed to leave work early. Mr. Hamre was experiencing work-related back pain and had clocked out for the lunch break when he decided he needed to leave work. Mr. Hamre looked for but could not locate a supervisor or another member of management during the lunch break. The production line entirely stopped during the lunch break and all staff went to lunch. Mr. Hamre did not go to the nurses' station before he left. Mr. Hamre had notified the employer on November 28 of what he describes as a pinched nerve. Mr. Hamre was displeased with the nursing staff's desire to treat his symptoms in-house, rather than to refer him for medical evaluation. At some point in the process, Mr. Hamre had mentioned the possibility of involving an attorney to assure that he received appropriate evaluation and treatment. In response to Mr. Hamre's request, the employer agreed to schedule a medical appointment for him, but the appointment would not occur until mid-December. Mr. Hamre was unhappy with the nursing staff's approach to his back pain issue and this factored in his decision not to go to the nurses' station before he left early on December 12.

Mr. Hamre appeared on time for his shift the next day. A short way into the shift, Mr. Hamre was summoned to a meeting with a human resources representative. Mr. Hamre provided information about why he left early the previous day and why he had not notified a supervisor. The human resources representative asked whether he even wanted to work for the employer. Mr. Hamre admitted to being unhappy with the way his back situation was being addressed and admitted to looking for other employment. The human resources representative asserted that Mr. Hamre's early departure on December 12 had been tantamount to job abandonment and discharged him from the employment.

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).

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 weight of the evidence in the record establishes a single unexcused absence on December 12, 2011. Mr. Hamre did not engage in any dishonesty or falsification in connection with the absence. The employer was unable to say whether Mr. Hamre’s early departure had any impact on production. Mr. Hamre was a line worker, but left during a scheduled shut down, not during production. The evidence indicates mitigating circumstances associated with the unexcused absence. Mr. Hamre’s single unexcused absence did not constitute misconduct. The weight of the evidence supports Mr. Hamre’s suggestion that other non-misconduct-related concerns may have factored in the discharge.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hamre was discharged for no disqualifying reason. Accordingly, Mr. Hamre is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Hamre.

DECISION:

The Agency representative's January 10, 2012, 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/kjw