

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BELINDA J HOLT**  
Claimant

**APPEAL NO. 08A-UI-11369-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLUE RIDGE PAPER PRODUCTS INC**  
Employer

**OC: 11/02/08 R: 04  
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 December 1, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 17, 2008. Claimant Belinda Holt participated. Russ Krogman, Interim Plant Manager, represented the employer. At the request of the claimant, the administrative law judge took official notice of the Agency's administrative file consisting of documents submitted for or generated in connection with the fact-finding interview. Exhibit B was received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Belinda Holt was employed by Blue Ridge Paper Products as a full-time machine operator from August 7, 2006 until February 9, 2008, when Russ Krogman, General Production Manager, discharged her for attendance. Mr. Krogman has since become the Interim Plant Manager.

The final absence that prompted the discharge occurred on February 8, 2008, when Ms. Holt was absent due to illness and properly notified the employer pursuant to the employer's written attendance policy. The absence placed Ms. Holt over the allowable number of attendance points and triggered the discharge. Ms. Holt appeared for work at the start of her shift on February 9, 2008. Mr. Holt took with her a doctor's excuse from the medical appointment she had on February 8, 2008. Those the doctor's note excused Ms. Holt until Monday, February 11, 2008, Ms. Holt had returned on February 9. On February 9, Ms. Hold was greeted by her immediate supervisor, Keith Schubert, who told her she was discharged from the employment for attendance.

## 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).

The evidence in the record establishes that the final absence that triggered the discharge was for illness properly reported to the employer. Accordingly, the absence was an excused absence under the applicable law and cannot serve as a basis for disqualifying Ms. Holt for unemployment insurance benefits. Because the final absence was an excused absence, the evidence in the record fails to establish a "current act" of misconduct. See 871 IAC 24.32(8). Because there was no current act of misconduct, the administrative law judge need not consider any prior attendance matters and whether they involved excused or unexcused absences.

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

**DECISION:**

The Agency representative's December 1, 2008, reference 01, 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/pjs