IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MALIK R LINDSEY
Claimant

RYDER INTEGRATED LOGISTICS INC
Employer

APPEAL NO. 14A-UI-02569-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/05/14
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 February 26, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and held that the employer's account could be charged for benefits. After due notice was issued, a hearing was held on March 31, 2014. Claimant Malik Lindsey participated. Jordan Van Ersvelde represented the employer and presented additional testimony through Steve Daniels. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant separated from the employment for a reason that would disqualify him for unemployment insurance benefits or that would relieve the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Malik Lindsey was employed by Ryder Integrated Logistics as a full-time material handler from October 2013 until January 9, 2014, when the employer discharged him for attendance. The employer's decision to end the employment was based on absences on December 26, 27, and 30, 2013. Earlier in December, Mr. Lindsey's immediate supervisor had asked for volunteers to work certain shifts during the weeks that included the Christmas and New Year's holidays. The days that the employer needed workers were December 23, 26, 27, and 30. Mr. Lindsey's supervisor told Mr. Lindsey that if he volunteered to work one or more of those days, he would be less likely to be required to work all four days. With that in mind, Mr. Lindsey volunteered to work on December 23. When the schedule was posted, the schedule had Mr. Lindsey working all four days. Mr. Lindsey discussed the schedule with his supervisor and the supervisor crossed Mr. Lindsey off the schedule for December 26, 27 and 30. Mr. Lindsey understood at that point that the supervisor had approved him to be off work on those three days in light of his volunteering to work December 23. Because Mr. Lindsey understood that he was no longer expected to work December 26, 27 and 30, he did not report for work on those days and he did not call in absences for those days. Mr. Lindsey returned to work on January 2, 2014 and continued to perform work for the employer through January 8, 2014. On January 9,

2014, the employer ended the employment based on alleged no-call/no-show absences on December 26, 26 and 30.

The employer's handbook contained a requirement that any employee who needed to be absent from work must notify his direct supervisor at least 30 minutes prior to the shift. The policy also indicated that failure to comply with that requirement would lead the employer to conclude that the employee had voluntarily resigned.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence in the record establishes a discharge for attendance, not a voluntary quit. The evidence indicates that Mr. Lindsey returned to work, and the employer allowed Mr. Lindsey to return to work, after the absences in question and that Mr. Lindsey continued to work for another week. The evidence indicates that the employer told Mr. Lindsey on January 9 that the employment was done. None of that evidence points to a voluntary quit.

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).

The administrative law judge notes that the employer did not present any testimony from Mr. Lindsey's immediate supervisor. The employer had the ability to present such testimony, but elected not to present such testimony.

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 weight of the evidence in the record establishes that Mr. Lindsey reasonably concluded, based on his contact with his supervisor after the schedule was posted, that the supervisor had approved him being away from work on December 26, 27, and 30, 2013. Each of those absences was an excused absence under the applicable law. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lindsey was discharged for no disqualifying reason. Accordingly, Mr. Lindsey is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's February 26, 2014, 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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