

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOHN M GRIMM
Claimant

APPEAL NO. 18A-UI-03956-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GO DADDY SOFTWARE INC
Employer

OC: 02/25/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

John Grimm filed a timely appeal from the March 22, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Grimm was discharged on January 30, 2018 for excessive unexcused absences. After due notice was issued, a hearing was held on April 23, 2018. Mr. Grimm participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Exhibit A was received into evidence.

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: John Grimm was employed by Go Daddy Software, Inc. as a part-time sales consultant from September 2017 until January 30, 2018, when his supervisor, Kristen, discharged him for attendance. The workplace was in Cedar Rapids. If Mr. Grimm needed to be absent from work or late for work, the employer's attendance policy required that he call or text his supervisor and call the absence reporting line. Mr. Grimm was familiar with the absence reporting requirement.

Mr. Grimm had other employment at the time he accepted the part-time employment with Go Daddy. Mr. Grimm disclosed his other employment to Go Daddy during his interview. The other employment involved coaching basketball teams. Mr. Grimm disclosed to Go Daddy during the interview process that his coaching duties would increase during tournament season and asked whether it would be a problem. The Go Daddy human resources representative assured Mr. Grimm that Go Daddy could accommodate Mr. Grimm's coaching duties.

Once Mr. Grimm completed his training at Go Daddy, his work schedule became 8:00 a.m. to 4:30 p.m. on Monday and Friday, 6:00 p.m. to 10:00 p.m. on Saturday, and noon to 4:00 p.m. on Sunday. When basketball season started, Mr. Grimm requested permission to work an

eight-hour shift on Sundays in lieu of working the four-hour evening shift on game day Saturdays. The employer initially acquiesced. However, after the first affected weekend in November 2017, Kristen notified Mr. Grimm that the arrangement would not work and that Mr. Grimm would need to plan on working the two four-hour weekend shifts or make other arrangements, that is, leave one of the employments. Thereafter, Mr. Grimm would ordinarily leave his coaching duties early to make it to the Go Daddy employment on time and would on those occasions leave the coaching duties to an assistant coach.

In November 2017, the employer notified Mr. Grimm that he would need to add a four-hour shift to his work schedule effective the beginning of January 2018. That additional shift was to be on Tuesday, from 8:00 a.m. to noon. Mr. Grimm was to start working the Tuesday shift on January 2, 2018.

On January 30, 2018, Kristen notified Mr. Grimm that he was being discharged for attendance. The final absence that triggered the discharge occurred on Saturday, January 13, 2018. On that day, Mr. Grimm coached a basketball game in Denver, Iowa. At 2:00 p.m., Mr. Grimm contacted the Go Daddy manager on duty to ask whether he could use some of his three hours of accrued paid time off that evening and report for work at 8:00 p.m. instead of 6:00 p.m. Before Mr. Grimm contacted the manager, he confirmed online that he had three hours of paid time off available. That manager confirmed that Mr. Grimm had three hours of paid time off available and approved Mr. Grimm's late arrival for the shift. Mr. Grimm's basketball game ended at 5:30 p.m. Mr. Grimm then had to travel back to Cedar Rapids. Mr. Grimm reported for work at 7:15 p.m. About a week to a week and a half later, Kristen spoke with Mr. Grimm about the absence and told Mr. Grimm that his attendance was under review. Kristen asserted that Mr. Grimm did not have paid time off available for use in connection with the absence. Mr. Grimm told Kristen that he had checked his paid time off before the absence and that the manager on duty had also checked to confirm that Mr. Grimm had three hours of paid time off available.

Mr. Grimm had two other absences that may have factored in the employer's discharge decision. At the start of the employment, Mr. Grimm missed two hours of a six-hour training session due to illness. Mr. Grimm requested to leave work early due to illness and the training supervisor approved his early departure. On Tuesday, January 2, 2018, Mr. Grimm forgot that he was supposed to report for work in connection with the newly-added Tuesday shift. Mr. Grimm realized his error about three hours into the four-hour shift and sent a text message to Kristen apologizing for the missed shift.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(4).

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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(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 a discharge for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving a discharge for misconduct in connection with the employment. The evidence does not establish a current act of misconduct or excessive unexcused absences. The evidence establishes that a manager approved in advance Mr. Grimm's late arrival on January 30, 2018. The manager approved the absence at 2:00 p.m. that afternoon. The shift was not set to start for another four hours. Mr. Grimm reasonably relied on the manager's indication that the late arrival would be approved. The evidence establishes an unexcused absence on January 2, 2018, when Mr. Grimm forgot about his Tuesday shift. The evidence establishes an excused absence early in the employment when Mr. Grimm left work early due to illness and with the approval of the training supervisor.

Because the evidence in the record establishes a discharge for no disqualifying reason, Mr. Grimm is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The March 22, 2018, reference 01, decision is reversed. The claimant was discharged on January 30, 2018 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/rvs