

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACALYN M LITTY

Claimant

APPEAL NO. 14A-UI-12855-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/16/14

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jacalyn Litty filed a timely appeal from the December 3, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on January 8, 2015. Ms. Litty participated personally and was represented by attorney Russell Dircks. Mary Hanrahan, Area Supervisor, represented the employer. Exhibits Three through Six, A, B and C were 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: Jacalyn Litty was employed by Casey's as a full-time kitchen worker at the employer's Clarence location from 1988 until November 10, 2014, when Mary Hanrahan, Area Supervisor, discharged her from the employment in response to an unexcused early departure from work on that day. Ms. Litty's immediate supervisor was Store Manager Jade Derynck. Ms. Litty usually worked the day shift, from 8:30 or 9:00 a.m. to 3:00 or 4:00 p.m. Ms. Litty has been diagnosed with an anxiety disorder and with chronic major depression, along with other health issues. Ms. Little takes multiple medications to treat her anxiety and depression.

The sole absence that factored in the separation from the employment occurred on Monday, November 10, 2014. Ms. Litty had run out of an anxiety medication over the weekend and needed to see her health care provider before she could obtain a refill on the medication or a new medication. Ms. Litty had just learned that her daughter was going to get divorced and move out of state. Ms. Litty was emotionally dependent on her daughter and was upset by the news from her daughter. When Ms. Litty arrived on time for work on November 10, 2014, she told Ms. Derynck that she would need to leave at noon to go to the doctor. The Casey's store was especially busy on November 10. The kitchen staff was busy with preparing for a 16-pizza order.

In mid-morning, Mary Hanrahan, Area Supervisor, arrived the store. Ms. Hanrahan perused the display cases and concluded that a particular food item that Ms. Litty had prepared and set out were not up to the employer's standard. Ms. Hanrahan told Ms. Litty that she and Ms. Litty would make more of the food item, pinwheels, in a short while. Ms. Litty was already upset and began to sob uncontrollably. Ms. Hanrahan told Ms. Litty to stop crying, which did not help matters and only made them worse. Ms. Litty told a coworker she could not handle the situation, clocked out, and left at 10:30 a.m. Ms. Litty did not announce that she was quitting.

After Ms. Litty left the workplace, she continued to be uncontrollably upset. Ms. Litty knew that she needed to get in to see her health care provider and obtained an appointment for that afternoon. The health care provider prescribed a new medication, noted Ms. Litty's poor mental state, wrote a prescription for an anti-anxiety medication, instructed Ms. Litty to get it filled right away, and instructed Ms. Litty to request an FMLA leave to preserve her job. The health care provider gave Ms. Litty a medical excuse to present to the employer.

Ms. Litty returned to the workplace around 4:00 p.m. and handed her medical excuse to Ms. Derynck. Ms. Derynck said it did not matter because Ms. Litty's employment was terminated per Ms. Hanrahan. When Ms. Hanrahan had discovered Ms. Litty had left the workplace without permission, Ms. Hanrahan had concluded that Ms. Litty had quit the employment by walking off the job. Ms. Hanrahan was aware that Ms. Derynck allowed employees to leave without permission and then return and resume their employment. Ms. Hanrahan told Ms. Derynck that Ms. Litty's unauthorized absence would be used as an example to establish appropriate management authority at the store.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Ms. Litty did not voluntarily quit the employment on November 10, 2014. Ms. Litty's compromised mental state, due to multiple mental health diagnosis, was the sole basis for her early departure that day. Ms. Litty was in mental crisis due to anxiety, was without her medication, and knew that she needed to get her medication filled before she could function normally. Ms. Litty had given appropriate notice to Ms. Derynck of her need to leave early on November 10, 2014 due to illness and due to need to consult a health care provider. The fact that Ms. Litty left earlier than she had initially indicated she would leave is insufficient to establish a voluntary quit. The fact that she left earlier than she had requested is sufficient to establish an unexcused absence.

Iowa Code § 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.

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 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.

Ms. Litty's single unexcused absence was insufficient to establish misconduct in connection with the employment, especially in the presence of the mitigating circumstances. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Litty was discharged for no disqualifying reason. Accordingly, Ms. Litty is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 3, 2014, reference 01, decision is reversed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs