

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENNIS G HOFFMAN
Claimant

APPEAL NO. 20A-UI-01288-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONALDSON COMPANY INC
Employer

OC: 01/12/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 7, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 14, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on February 28, 2020. Claimant Dennis Hoffman participated. Gary Loden represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 3 into evidence.

ISSUES:

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

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dennis Hoffman was employed by Donaldson Company, Inc. as a full-time machine operator from February 2018 until January 15, 2020, when the employer discharged him from the employment for attendance. Mr. Hoffman's usual work hours were 10:00 p.m. to 6:00 a.m., Sunday evening through Friday morning. The workplace was in Cresco, Iowa. Mr. Hoffman resided in Spring Valley, Minnesota throughout the period of employment. Mr. Hoffman's commute to work usual took 30 minutes. If Mr. Hoffman needed to be absent from a shift or late for a shift, the employer's attendance policy required that Mr. Hoffman called the designated absence reporting line prior to the scheduled start of the shift and provide the reason for the absence, his employee number, and the date he would be gone. Mr. Hoffman was at all relevant times aware of the absence reporting problem.

The final absence that triggered the discharge occurred on January 14, 2020, when Mr. Hoffman was nine minutes late for work due to inclement weather. On that day,

Mr. Hoffman received an automated weather alert from an application he had installed on his phone. Mr. Hoffman left home an hour and 15 minutes prior to the scheduled start of his shift to give himself extra time to get to work in light of the snowy weather. Once Mr. Hoffman commenced his commute, he encountered heavy snowfall that significantly reduced visibility and that slowed the speed of traffic to 20 miles per hour. Once Mr. Hoffman got south of Lime Springs, Iowa, he and other traffic had to stop while a tow truck and law enforcement removed a tractor-trailer rig that had gone into the ditch. Mr. Hoffman used his time in stopped traffic to provide a timely report to the employer that he would be late due to weather. Mr. Hoffman arrived for work nine minutes late. The next most recent absence that factored in the discharge occurred on November 13, 2019, when Mr. Hoffman was absent due to illness and properly reported the absence. The employer considered earlier absences when making the decision to discharge Mr. Hoffman from the employment.

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 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).

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 administrative law judge found Mr. Hoffman to be a very credible witness. Mr. Hoffman provided straightforward, balanced and detailed testimony regarding the circumstances surrounding the final absence and earlier absences. The evidence fails to establish a current act of misconduct. The final absence on January 14, 2020, was due to inclement weather, a matter beyond Mr. Hoffman's control. Mr. Hoffman took reasonable steps toward getting to work on time. Mr. Hoffman could not have anticipated the significantly reduced visibility that slowed his commute to 20 miles per hour. Mr. Hoffman could not have anticipated being stopped midway through commute due to the need for a tow truck and law enforcement to extract a tractor-trailer from the ditch. Mr. Hoffman properly reported the absence and arrived as soon as he was reasonably able. The January 14, 2020 absence was an excused absence under the applicable law and cannot serve as a basis for disqualifying Mr. Hoffman for unemployment insurance benefits. The next most recent absence occurred two months prior to the discharge, was due to illness, was properly reported, and was also an excused absence under the applicable law. Because the evidence fails to establish a current act, the administrative law judge need not consider earlier absences. Mr. Hoffman is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The February 7, 2020, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge occurred on January 15, 2020. 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

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