

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JARED D JOHNSTON
Claimant

APPEAL NO. 19A-UI-07252-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 12/30/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jared Johnston filed a timely appeal from the September 9, 2019, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Johnston was discharged on August 8, 2019 for excessive unexcused absenteeism. After due notice was issued, a hearing was commenced on October 4, 2019 and concluded on October 9, 2019. Mr. Johnston participated personally and was represented by attorney Randall Schueller. Brittany Pearson represented the employer. Exhibits 2 through 8 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: Jared Johnston was employed by Pella Corporation as a full-time Warehouse Operator from January 2018 until August 8, 2019, when the employer discharged him for attendance. The final absence that triggered the discharge occurred on July 9, 2019, when Mr. Johnston left work early to attend to his wife's medical condition. Mr. Johnston's wife has a heart condition and wears a heart monitor. During the July 9 shift, Mr. Johnston received a phone call from his mother-in-law, who indicated that Mr. Johnston's wife's heart monitor was alarming and that Mr. Johnston needed to get his wife medical attention. Before Mr. Johnston left the workplace, he notified his supervisor of his need to leave work early to attend to his wife's medical condition. Mr. Johnston then left the workplace and transported his wife to an emergency room in Des Moines. When Mr. Johnston returned to work his next shift, the employer notified him that he faced possible discharge from the employment in connection with the July 9, 2019 absence. The employer considered earlier absences and reprimands when making the decision to discharge Mr. Johnston from the employment. The next most recent absence occurred on June 3, 2019.

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 final absence that triggered the discharge was due to the illness of an immediate family member and the need to seek medical evaluation and/or treatment for the family member. Mr. Johnston took reasonable and timely steps to notify the employer of his need to leave work to obtain medical care for his spouse. The final absence was an excused absence under the applicable law and cannot serve as a basis for disqualifying Mr. Johnston for unemployment insurance benefits. The next most recent absence was more than a month earlier than the final absence. The evidence fails to establish a current act of misconduct. Because the final absence was an excused absence under the applicable law and because the evidence fails to establish a current act of misconduct, the administrative law judge need not consider earlier absences and reprimands. Mr. Johnston is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The September 9, 2019, reference 02, decision is reversed. The claimant was discharged on August 8, 2019 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