

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KAREN M HASKELL**  
Claimant

**APPEAL NO. 18A-UI-06422-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 04/15/18**  
**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

Karen Haskell filed a timely appeal from the May 31, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Haskell voluntarily quit on April 11, 2018 by failing to notify the temporary employment firm within three working days of completing an assignment after being advised in writing of her obligation to make such contact. After due notice was issued, a hearing was held on June 27, 2018. Ms. Haskell participated. Olivia Watson represented the employer.

**ISSUE:**

Whether Ms. Haskell separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Haskell established her employment with Express Services, Inc. in November 2017 and performed work in five assignments at two client businesses. The most recent assignment was a full-time, temporary work assignment at the Nordstrom distribution center in Cedar Rapids. Ms. Haskell began the assignment on April 2, 2018. On April 12, 2018, Ms. Haskell was discharged from the Nordstrom assignment and from the Express Services employment for attendance. During the last week of the Nordstrom assignment, Ms. Haskell was assigned to the overnight shift, 10:00 p.m. to 6:00 a.m. The effective work week ran from Sunday evening to Thursday morning. On the event of April 9, 10 and 11, Ms. Haskell was tardy in reporting for work. Ms. Haskell was experiencing problems with groin pain and swelling. Though Express Services policy required that Ms. Haskell notify Express Services if she needed to be late, Ms. Haskell did not notify Express Services of her need to be late. After Ms. Haskell reported for work late three nights in a row, Paul Anderson, Nordstrom Third Shift Packing Assistant Manager notified Express Services on the morning of April 12, 2018 that Nordstrom was ending the assignment. On the morning of April 12, 2018, an Express Services representative notified

Ms. Haskell that she should not return to the assignment. Discharge from the Nordstrom assignment rendered Ms. Haskell ineligible for a new assignment with Express Services. Ms. Haskell did not request and Express Services did not offer a new work assignment.

### **REASONING AND CONCLUSIONS OF LAW:**

The weight of the evidence establishes a discharge from the assignment and from the employment that was based on attendance.

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 a discharge 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 weight of the evidence in the record establishes unexcused tardiness on three consecutive dates, April 9, 10 and 11, 2018. Though Ms. Haseill may have been dealing with a health issue that factored in her work arrival time, she failed to properly notify Express Services or Nordstrom that she would be late on any of the three consecutive dates in question. Being tardy without notice for three consecutive days constitutes excessive unexcused absences and misconduct in connection with the employment. Because the evidence establishes a discharge for misconduct in connection with the employment, Ms. Haskell is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Haskell must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The May 31, 2018, reference 01, decision is modified as follows. The claimant was discharged on April 12, 2018 for excessive unexcused absences that constituted misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs