

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW D CLARK
Claimant

APPEAL NO. 14A-UI-09866-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

**OC: 08/31/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Matthew Clark filed a timely appeal from the September 18, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was started on October 30, 2014 as an in-person proceeding in Fort Dodge and was completed on October 31, 2014 as a telephone proceeding. Mr. Clark participated personally and was represented by attorney Andy LeGrant. Frank Velazquez represented the employer and presented additional testimony through Carl Polson and Tony Detrick. Exhibits One, Two, Three, A through F, J and K were received into evidence.

ISSUE:

Whether Mr. Clark separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthew Clark was employed by Hormel Foods Corporation as a full-time sanitation worker from April 2014 until September 3, 2014, when the employer discharged him based on a single absence that the employer erroneously characterized as a voluntary quit by job abandonment. Mr. Clark's work hours were 10:00 p.m. to 6:30 a.m. In the early hours of the morning on August 30, 2014, the employer had Mr. Clark submit to a drug test after the employer had the person who Mr. Clark rode to work with submit to a drug test. Mr. Clark was not under the influence of drugs. Mr. Clark has an anxiety disorder that was in full swing at the time in question. After Mr. Clark provided a urine specimen for drug testing, the employer's policy called for him to be suspended pending receipt of the drug test result. The supervisor on duty was unaware of this requirement and directed Mr. Clark to return to assign duties after Mr. Clark returned to the workplace after providing the specimen. Mr. Clark performed his duties for a short while, but then determined he was of no use in his then present mental condition. Mr. Clark left work at 5:21 a.m. Mr. Clark did not get permission from the supervisor before he left the workplace. Mr. Clark did not leave work early with the intention of quitting the employment. Indeed, Mr. Clark had annoyed the supervisor during the shift by repeatedly inquiring whether his job was in jeopardy.

On August 31, 2014, Mr. Clark telephoned the human resources manager at home to inquire about whether he still had a job in light of the drug test. The human resources manager directed Mr. Clark to contact the human resources manager on September 2 to further discuss the matter. On September 2, Mr. Clark showed up at the workplace to meet with the human resources manager without an appointment. The meeting did not go well. During the meeting, Mr. Clark asserted that he had asked the human resources manager for an A.D.A. accommodation during the August 31 telephone call. The human resources supervisor involved the plant manager in the discussion. After the meeting, the human resources manager ended up directing Mr. Clark off the property. Mr. Clark had been in the process of leaving anyway. On September 3, the employer notified Mr. Clark that he was discharged from the employment for allegedly abandoning the employment on August 30, 2014.

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.

The evidence in the record does not support a conclusion that Mr. Clark voluntarily quit the employment. The evidence indicates instead that the employer discharged Mr. Clark from the employment. The discharge was ostensibly based on the unexcused early departure on August 30, 2014. The discharge was based just as much on the employer's annoyance with Mr. Clark.

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.

The employer emphasizes that the discharge was based on the single unexcused early departure that the employer deemed job abandonment under its work rules. The circumstances surrounding that early departure do not indicate job abandonment. Instead, the circumstances indicate an individual who was acting out mental illness and whose anxiety issues had been triggered by a workplace event. The single unexcused absence was insufficient to establish misconduct in connection with the employment. The ongoing annoyance created by the claimant's mental health issues also did not establish misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 18, 2014, reference 01, decision is reversed. The claimant was discharged 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/pjs