

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SENECCA R FORBES
Claimant

APPEAL NO. 14A-UI-00482-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIOLIFE PLASMA LLC
Employer

OC: 12/22/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Senecca Forbes filed a timely appeal from the January 14, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 5, 2014. Ms. Forbes participated. Ronda Harnish represented the employer.

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: Senecca Forbes was employed by Biolife Plasma as a full-time Senior Plasma Center Tech from November 2012 until December 23, 2013, when Ronda Harnish, Center Manager, discharged her for repeat tardiness. The final incident of tardiness occurred on December 23, 2013, when Ms. Forbes appeared late for work because she had not reviewed her work schedule for that day. Ms. Forbes was on the schedule to work at 9:45 a.m. that day. Because she had not looked at the schedule, Ms. Forbes scheduled a medical appointment for that morning. A coworker alerted Ms. Forbes that she was late for work and Ms. Forbes rushed from her medical appointment. Ms. Forbes had been late for work for personal reasons on December 16.

In making the decision to discharge Ms. Forbes from the employment, the employer considered additional instances of tardiness and reprimands for tardiness. On April 22 and 29, Ms. Forbes was late for personal reasons. On June 3, Ms. Forbes arrived a minute late in the morning. Ms. Forbes was then late returning from lunch, but was late because she needed to collect her ill child from daycare. Ms. Forbes had notified the employer of her need to collect her son and the employer had allowed Ms. Forbes to bring her son back to daycare located at the workplace. On June 14 and 20, and July 26 and 31, Ms. Forbes was late for personal reasons.

On August 6, Ms. Forbes was late because she was caring for her sick child, and properly notified the employer of her need to be late. On August 7, Ms. Forbes was late because she overslept. On August 16, Ms. Forbes was late getting to work because she was caring for her sick child and properly notified the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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 evidence in the record establishes excessive unexcused absences based on repeated tardiness. The final absence on December 23, 2013 was attributable to Ms. Forbes not reviewing the posted work schedule. Ms. Forbes had just been late for personal reasons on December 16, 2013. Those two unexcused absences followed several other unexcused absences on April 22 and 29, on June 14 and 20, on July 26 and 31, and on August 7, 2013. Ms. Forbes had received multiple reprimands for attendance.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Forbes was discharged for misconduct. Accordingly, Ms. Forbes is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Forbes.

DECISION:

The Agency representative's January 14, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. 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 allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs