

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRINA LAKE
Claimant

APPEAL NO. 16A-UI-10113-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 08/21/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Terrina Lake filed a timely appeal from the September 13, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Ms. Lake had voluntarily quit on August 17, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 30, 2016. Ms. Lake participated. The employer did not comply with the hearing notice instructions register a telephone number for the hearing and did not have anyone participate in the hearing. The employer submitted notice that it was limiting its participation in the appeal hearing to submission of one exhibit, an email message that was received into the record as Exhibit 1. Exhibit A, the claimant's online appeal, was also received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies her 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: Terrina Lake was employed by TPI Iowa, L.L.C., as a full-time paint prep worker. Ms. Lake started the employment on May 2, 2016. Ms. Lake's work hours were 6:00 a.m. to 2:00 p.m., Monday through Friday. Ms. Lake also worked on Saturdays as needed. Ms. Lake's immediate supervisor was Patrick Couples, Process Supervisor.

Ms. Lake last performed work for the employer on Friday, August 12, 2016. Ms. Lake completed her shift on August 12 and was next scheduled to work on Monday, August 15, 2016. On Sunday evening, August 14, 2016, Ms. Lake was arrested on an outstanding Illinois arrest warrant. Following the arrest on August 14, 2016, Ms. Lake remained incarcerated in the Jasper County Jail until Illinois authorities took her into custody on Thursday, August 18, 2016. On Monday, August 15 through Thursday, August 18, Ms. Lake provided daily notice to TPI of her need to be absent by telephoning the designated absence reporting number. On August 18, Ms. Lake left a message on the TPI absence reporting line indicating that she was she was

being transported to Champlain, Illinois. On Saturday, August 20, 2016, Ms. Lake was released from Illinois custody pending a November 5, 2016 hearing.

On Monday, August 22, 2016, Ms. Lake left a message on the employer's phone asking whether she still had a job. On August 23, 2013, Ms. Lake contacted the employer and spoke with Tahler Wildman, Human Resources Generalist. Ms. Lake asked Ms. Wildman whether she still had a job. Ms. Wildman told Ms. Lake that the employer had terminated her employment, but that Ms. Wildman could reapply in six months.

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 weight of the evidence establishes that Ms. Lake was discharged and did not voluntarily quit. Ms. Lake denied in sworn testimony that she voluntarily quit the employment. All of the evidence in the record, except for the August 18 email, came from Ms. Lake. The employer elected not to participate in the hearing other than submitting the single cursory email. The employer's August 18 email is insufficient to rebut Ms. Lake's assertion that she did not quit the employment.

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 failed to present any evidence to prove unexcused absences or to otherwise prove 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 Ms. Lake was

discharged for no disqualifying reason. Accordingly, Ms. Lake is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits..

DECISION:

The September 13, 2016, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs