

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CURTIS A KADLEC**

Claimant

**APPEAL NO. 18A-UI-05724-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**

Employer

**OC: 04/15/18**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Curtis Kadlec filed a timely appeal from the May 14, 2018, reference 05, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Kadlec was discharged on April 9, 2018 failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on June 11, 2018. Mr. Kadlec participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A through E were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, WAGE-A, and the May 14, 2018, reference 04, decision.

**ISSUE:**

Whether Mr. Kadlec separated from the employment for a reason that disqualifies him 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: Curtis Kadlec was employed by Whirlpool Corporation as full-time Door Foam 1 Loader. Mr. Kadlec commenced his employment in September 2017 and last performed work for the employer on March 8, 2018. Line Supervisor Tracy Hardy was Mr. Kadlec's supervisor. Mr. Kadlec's work hours were 3:30 p.m. to midnight, Monday through Friday. Mr. Kadlec assisted with manufacturing refrigerators. Mr. Kadlec worked on a fast-paced production line. Mr. Kadlec's duties involved selecting the correct sheet metal door for the particular production order, quickly inspecting the piece, and placing the door on the production line. Mr. Kadlec would repeat this process about 200 times per hour. The door pieces weighed two to three pounds each.

After work on Thursday, March 8, 2018, Mr. Kadlec was cleaning a fish tank at home when he felt something pop in his right wrist. Mr. Kadlec is left-handed. In connection with the popping sensation, Mr. Kadlec began to experience pain radiating up his right arm to his right shoulder. On Friday, March 9, 2018, Mr. Kadlec called in an absence from work due to the pain in his wrist and arm. When Mr. Kadlec's condition did not improve with rest over the weekend,

Mr. Kadlec sought medical evaluation on Monday, March 12, 2018. The doctor took Mr. Kadlec off work for a couple days to provide additional time for Mr. Kadlec to rest his arm. The doctor advised Mr. Kadlec take ibuprofen for discomfort. Mr. Kadlec promptly notified the employer and properly reported his absences. The employer advised Mr. Kadlec that he would need to provide a medical release before the employer would allow Mr. Kadlec to return to work.

On March 14, 2018, Mr. Kadlec had a follow-up medical appointment regarding his wrist. At that time, the doctor released Mr. Kadlec to return to work, but advised him to wear a brace on his right wrist. Mr. Kadlec's doctor promptly provided the employer with a copy of the medical release that listed no medical restrictions, but which advised Mr. Kadlec to wear the wrist brace while performing his work duties. The employer did not allow Mr. Kadlec to return to work. The employer interpreted the need for the wrist brace as a request for light-duty work. Mr. Kadlec had not requested light-duty work and his doctor had not recommended light-duty work.

On March 14, 2018, a Whirlpool human resources representative left a voicemail message for Mr. Kadlec in which the representative directed Mr. Kadlec to contact Matrix, the employer's third-party leave and accommodations administrator, to initiate the process of determining whether the employer could provide light-duty work. The employer representative instructed Mr. Kadlec to apply for short-term disability benefits so that Mr. Kadlec would have an income while the discussion regarding light-duty work ran its course. The employer directed Mr. Kadlec to continue calling the automated absence reporting line until he had a decision from Matrix. Mr. Kadlec contacted Matrix as directed and continued to call in daily absences. Mr. Kadlec promptly complied with the employer representative's directives.

On March 20, 2018, Mr. Kadlec had a follow-up medical appointment regarding his wrist. At that time, the doctor ordered x-rays of Mr. Kadlec's wrist. The x-rays showed there was nothing abnormal in Mr. Kadlec's wrist. The doctor again released Mr. Kadlec to return to work and to wear the wrist brace. At the employer's request, Mr. Kadlec had authorized release of information to the employer's human resources department and to Matrix. Mr. Kadlec and/or his doctor promptly provided Matrix with the updated medical information. The employer did not allow Mr. Kadlec to return to work. Matrix communicated that it was still in the process of deciding whether Mr. Kadlec was eligible for light-duty work. Mr. Kadlec and his doctor were still not requesting light-duty work.

Mr. Kadlec continued to report his absences as directed. This continued through April 7, 2018. Mr. Kadlec then discovered that his login credentials that he needed to use to access the absence reporting system no longer worked. Mr. Kadlec contacted the employer, left a message, but received no response. On April 9, 2018, Mr. Kadlec received a letter from Matrix advising him that his request for leave under the Family and Medical Leave Act (FMLA) was denied. Mr. Kadlec had not applied for FMLA leave and knew that he had not worked for the employer long enough to be eligible for FMLA leave. At about the same time, Mr. Kadlec received a letter instructing him to have his doctor complete an Americans with Disabilities Act (ADA) form setting forth his work restrictions. However, Mr. Kadlec had no work restrictions beyond the previously documented need to wear the wrist brace on his right arm. The letter provided an April 12, 2018 deadline for submission of ADA work restriction information. At that point, Mr. Kadlec gave up on his attempt to return to the employment. Mr. Kadlec subsequently applied for unemployment insurance benefits and sought other employment.

## 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 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.

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the hearing and did not present any evidence to prove misconduct in connection with the employment or to prove that Mr. Kadlec voluntarily separated from the employment. The evidence establishes that employer refused to allow Mr. Kadlec to return to the employment after Mr. Kadlec's doctor released him to return to his regular duties on March 12, 2018. The doctor's instruction that Mr. Kadlec wear a brace on his non-dominant arm while performing his work duties did not constitute a request for light-duty work and did not prevent Mr. Kadlec from performing his regular duties. The weight of the evidence establishes that the employer engaged in a course of conduct in the weeks that followed the March 12 release that prevented Mr. Kadlec from returning to the employment. The employer has presented no evidence to establish unexcused absences or that Mr. Kadlec unreasonably failed to follow a reasonable employer directive. The employer presented no evidence to establish that the employer's directive to complete and return an ADA accommodations form by April 12 was reasonable in light of the events that preceded the directive.

Because the evidence establishes a discharge for no disqualifying reason, Mr. Kadlec is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The May 14, 2018, reference 05, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs