

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**DOUGLAS J NEUZIL**  
Claimant

**APPEAL NO. 22A-UI-14700-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BODENSTEINER IMPLEMENT COMPANY**  
Employer

**OC: 05/15/22  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On July 1, 2022, Douglas Neuzil (claimant) filed a timely appeal from the June 22, 2022 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on May 17, 2022 for violation of a known company rule. After due notice was issued, a hearing was held on August 12, 2022. Claimant participated. Dave Guyer represented the employer. Exhibit A was received into evidence.

**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:

Douglas Neuzil (claimant) was employed by Bodensteiner Implement Company as a full-time parts counter employee at the employer's Dyersville agricultural implement business from 2006 until May 17, 2022, when Dave Guyer, Corporate Parts Manager, and Phil Gravel, Dyersville Parts Manager, discharged him for attendance. Mr. Gravel was the claimant's supervisor. The employer is busiest during spring planting and fall harvest. In the off season, the claimant's work hours would usually be 7:30 a.m. to 5:00 p.m., Monday through Friday, and shortened hours on rotating Saturdays. During both busy seasons, when time is of the essence for the employer's customers, the employer expands its hours of operation to 7:00 a.m. to 6:00 p.m., Monday through Friday, 7:00 a.m. to 5:00 p.m. on Saturday, and 10:00 a.m. to 2:00 p.m. on Sunday. The claimant's work hours, work load, and work stress would increase commensurately. As the employer's business grew year over year, the implement business has handled the growing business with the same number of staff. During the busy season the work was fast-paced and it was not uncommon for the claimant to work seven to 12 consecutive days without a scheduled day off. If the claimant desired to take a day off and knew in advance, the employee handbook required the claimant to submit a written request a week before the requested date. If the claimant needed to be absent due to illness or some other reason with

less than a week's notice, the employer expected the claimant to send a text message to his supervisor. The employer did not specify the time by which such message should be sent. The employee handbook also indicated that leaving the workplace prior to the scheduled end of the shift without notice to a supervisor could be deemed job abandonment.

Toward the end of the employment, the claimant was experiencing anxiety and/or depression and sought treatment with his primary care doctor. The claimant's mental health challenges occurred in the context of the employer's busy season. The claimant thought his mental health issues were a private matter and did not disclose his mental health condition to the employer. At the doctor's suggestion, the claimant commenced taking a prescription anti-depressant. When the first anti-depressant provided ineffective, the claimant's doctor switched the claimant to a new medication and advised it could be a number of weeks before the claimant experienced the benefit of the medication.

The final absences that triggered the discharge occurred on May 16 and 17, 2022. On both days, the claimant did not feel mentally well enough to work and notified the employer he would be absent. When the claimant gave notice on May 17, his supervisor told him he really needed him. The claimant agreed to report for work, but advised he would be late. The claimant reported for work 15 to 20 minutes late. The claimant stayed in the workplace about an hour, concluded he was of no use in his mental state, and decided to leave the workplace. At the time the claimant left, the claimant's supervisor was in a meeting. For that reason, the claimant did not notify the supervisor of his need to leave, but instead notified a coworker in the parts department. Later that day, the employer notified the claimant he was discharged from the employment.

The only other absences that factored in the discharge occurred on September 28 and October 18, 2021, during the fall harvest season. On September 28, 2021, the claimant was absent due to back pain and properly notified the employer of his need to be absent. The claimant's duties required lifting and quick ambulation. On October 18, 2021, the claimant was absent due to illness, an adverse reaction to a COVID-19 vaccination, and properly notified the employer.

The claimant had received no reprimands or warnings in connection with the 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 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 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.

While a disqualifying discharge for attendance usually requires *excessive* unexcused absences, a single unexcused absence may in some instances constitute misconduct in connection with the employment that would disqualify a claimant for benefits. See *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). In *Sallis*, the Supreme Court of Iowa set forth factors to be considered in determining whether an employee's single unexcused absence would constitute disqualifying misconduct. The factors include the nature of the employee's work, dishonesty or falsification by the employee in regard to the unexcused absence, and whether the employee made any attempt to notify the employer of their absence.

The claimant was discharged for no disqualifying reason. Each of the absences that factored in the discharge was due to illness. All but the early departure on May 17, 2022 were properly reported to the employer. The claimant reported the early departure to a coworker. The early departure on May 17, 2022 was an unexcused absence under the applicable law. The other absences were excused absences under the applicable law and may not be considered against the claimant when determining eligibility for unemployment insurance benefits. The claimant's sole unexcused absence was not an excessive absence. Nor were there any aggravating factors associated with the absence. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The June 22, 2022 (reference 01) decision is reversed. The claimant was discharged on May 17, 2022 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

\_\_September 27, 2022\_\_  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.