

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARINA E DARNELL**  
Claimant

**APPEAL NO. 16A-UI-13520-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS LODGE & SUITES LLC**  
Employer

**OC: 12/04/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Karina Darnell filed a timely appeal from the December 21, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Darnell as discharged on December 6, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on January 12, 2017. Ms. Darnell participated and was represented by paralegal John Graupmann of Iowa Legal Aid. Rhonda Coborn represented the employer and presented additional testimony through, Ajani Marsh. Exhibits 1, 2, 3 and A through F were received into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the discharge was based on a current act.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Karina Darnell was employed by Cedar Rapids Lodge & Suites, L.L.C, d/b/a AmericInn, from 2013 until December 6, 2016, when Managing Governors Rhonda Coborn and Scott Shisler discharged her from the employment. Ms. Darnell became the motel's General Manager in March 2015. Prior to that, Ms. Darnell was Head Housekeeper. Ms. Coborn and Mr. Shisler were Ms. Darnell's immediate supervisors. As General Manager, Ms. Darnell supervised nine to 13 employees. Ms. Darnell's regular working hours in the General Manager position were 8:00 a.m. to 4:30 p.m. Ms. Darnell was expected to adjust her work hours as needed to meet the motel's staffing needs.

The final incident that triggered the discharge occurred on the morning on November 15, 2016. On November 13, Ms. Darnell responded to a front desk clerk's request for the evening of November 15 off, by adjusting her own work schedule and the work schedule of front desk clerk Ajani Marsh. Ms. Darnell told Ms. Marsh that Ms. Darnell would start her November 15 work

day at 7:00 a.m. and would cover the front desk duties during the dayshift. Ms. Darnell had Ms. Marsh shift her work hours for November 15 from the day shift hours to the evening shift hours of 3:00 p.m. to 11:00 p.m. Ms. Darnell did not note any of the scheduling changes on the posted schedule.

On the morning of November 15, Ms. Darnell was late for work for personal reasons. Ms. Darnell's late arrival negatively impacted Night Auditor, Anthony Hamilton. Mr. Hamilton had begun his overnight shift at 7:00 p.m. the previous evening and was scheduled to leave at 7:00 a.m. Ms. Darnell's late arrival caused Mr. Hamilton to have to work late. At 7:10 a.m., Mr. Hamilton telephoned Ms. Marsh and asked whether Ms. Marsh was supposed to work at 7:00 a.m. Ms. Marsh told Mr. Hamilton that she and Ms. Darnell had "switched" shifts and that Mr. Hamilton should call Ms. Darnell. Ms. Marsh and Mr. Hamilton made contact with Ms. Darnell and Ms. Darnell said she was on her way. Ms. Darnell authorized Mr. Hamilton to leave before she arrived. Ms. Darnell arrived at work sometimes between 7:31 a.m. and 8:00 a.m. Mr. Hamilton waited in the parking lot until 7:31 a.m. When Ms. Darnell had not arrived by that time, Mr. Hamilton left. This left the front desk unstaffed for a short period of time. When Ms. Darnell failed to show up on time to relieve Mr. Hamilton, Mr. Hamilton sent a text message to Ms. Coburn to alert her to Ms. Darnell's late arrival. Ms. Coburn took no immediate action on the matter.

Ms. Darnell had also arrived late for work for personal reasons on October 29, 2016. On that day, Ms. Darnell was supposed to start at her regular 8:00 a.m. start time. At 9:45 a.m., Ms. Darnell has still not appeared for work. Ms. Marsh was present at the motel and manned the front desk that morning. Ms. Coburn learned of Mr. Darnell's late arrival that same morning. As of November 15, Ms. Coburn had not addressed the October 29 tardiness with Ms. Darnell.

Ms. Coburn did not begin to take steps to address Ms. Darnell's tardiness on October 29 and November 15, or the lack of front desk coverage on the morning of November 15, until November 22, 2016, when Ms. Darnell submitted her time card for the period that included November 15, 2016. Ms. Darnell had elected not to have the time clock punch her arrival time on November 15 and had instead written on the time card that she had arrived at 8:00 a.m. Ms. Darnell had indeed arrived at the motel by her usual start time of 8:00 a.m., but not by the 7:00 a.m. earlier start time she had assigned to herself and had communicated to the staff.

On November 22, Ms. Coburn sent Ms. Darnell an email message about time cards in general, but did not specifically question Ms. Darnell about her own time card. Ms. Coburn's initial message was about computing military time. The time clock at the motel utilized military time. At the time of the correspondence, the motel's time clock had not yet been adjusted to reflect the end of daylight savings time earlier in November. When Ms. Darnell referenced day light savings time, Ms. Coburn asked, "So, when the employees write their time on the card they are matching the clock which is an hour ahead?" Ms. Darnell replied, "Correct." Ms. Coburn took this response to mean that when Ms. Darnell wrote on her time card that she had arrived at 8:00 a.m. on November 15, Ms. Darnell was actually asserting that she had arrived at 7:00 a.m. However, Ms. Coburn did not ask Ms. Darnell any further questions regarding that concern. Instead, Ms. Coburn concluded at that time that Ms. Darnell had been dishonest in reporting her November 15 start time.

On November 22, Ms. Coburn received written statements she had solicited from front desk clerks, Adam Colebeck and Ajani Marsh, regarding the scheduling changes Ms. Darnell had authorized on November 14 and Ms. Darnell's late arrival on November 15. On November 23, Ms. Coburn received the written statement she had solicited from Night Auditor, Anthony Hamilton.

Ms. Coburn did not take any further action on the matter until December 6, 2016, when she spoke to Ms. Darnell and discharged her from the employment. Ms. Darnell had continued to perform her duties. On December 6, Ms. Coburn asked Ms. Darnell why she had not punched the clock upon her arrival on November 15. Ms. Darnell falsely asserted at that time that she had been in the vicinity of the time clock at the appropriate time, but had not punched in on the clock. Ms. Darnell did not have an explanation at that time regarding why she had elected not to clock in on November 15.

## **REASONING AND CONCLUSIONS OF LAW:**

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 weight of the evidence in the record establishes misconduct in connection with the employment. Ms. Darnell was late for personal reasons on October 29, 2016 and again on November 15, 2016. These two unexcused absences within a 17-day period were excessive under the circumstances. Ms. Darnell was the supervisor, not a rank-and-file staff member. Ms. Darnell's late arrival on November 15, caused the overnight auditor to have stay longer than his 12-hour shift. Ms. Darnell authorized Mr. Hamilton to leave the workplace prior to her arrival on November 15 and, thereby, left the front desk unstaffed for a matter of minutes. Exactly how long is anyone's guess because Ms. Darnell's testimony on that matter is unreliable and not credible. Ms. Darnell intentionally misrepresented her November 15, 2016 arrival time on her time card to suggest that she had arrived in a timely manner at 7:00 a.m. Ms. Darnell wrote 8:00 a.m. in the time clock entry to take into account of and to be consistent with the time clock and other time clock entries being ahead by one hour. Her intention was to assert a 7:00 a.m. timely arrival. Ms. Darnell was again intentionally dishonest with Ms. Coborn on December 6, 2016, when she asserted that she had been on time for work on November 15, 2016. Ms. Darnell's position as General Manager was a position that required trustworthiness. Ms. Darnell knew this. Ms. Darnell's intentional dishonesty fundamentally undermined the employer's ability to trust her and demonstrated substantial disregard of the employer's interests. Ms. Darnell's decision to leave the front desk unstaffed for any period of time also demonstrated a willful disregard of the employer's interests.

The evidence establishes a current act of misconduct. In this case, the most current act of misconduct that factored in the discharge was Ms. Darnell's intentional dishonesty during the December 6, 2016 discussion with Ms. Coburn. That misconduct occurred the same day Ms. Darnell was discharged from the employment.

Because the evidence established a discharge for misconduct in connection with the employment, Ms. Darnell is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Darnell must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The December 21, 2016, reference 01, decision is affirmed. The claimant was discharged on December 6, 2016 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs