

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARONDA D JENKINS JONES
Claimant

APPEAL NO. 14A-UI-06978-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 06/08/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Laronda Jenkins Jones filed a timely appeal from the June 24, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on August 18, 2014. Ms. Jenkins Jones participated. The employer was not available at the number the employer had provided for the hearing and did not participate. At 9:54 a.m., after the hearing record had closed and after the claimant had been dismissed, employer representative Tracey Kennis contacted the Appeals Section regarding the 9:00 a.m. hearing. The employer's representative of record had received appropriate notice of the hearing and, on August 13, 2014, had provided a telephone number where Ms. Kennis could be reached for the hearing. The administrative law judge made three attempts to reach Ms. Kennis for the hearing at that time of the hearing, but had to leave voice mail messages when Ms. Kennis did not answer. When the administrative law judge spoke to Ms. Kennis in connection with her late call, Ms. Kennis indicated that she had not been available to receive the administrative law judge's calls at the time of the hearing because she thought the hearing was set for another day. The administrative law judge concluded that the employer had not presented good cause to reopen the hearing record.

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: Laronda Jenkins Jones was employed by REM Iowa Community Services, Inc., as a full-time direct support professional from May 2013 until June 14, 2014, when the employer discharged her for attendance.

The final absence that triggered the discharge was Ms. Jenkins Jones' late arrival on June 14, 2014. Ms. Jenkins Jones is a mother of a one and a half year old boy who suffers from breathing problems. On June 14, 2014, Ms. Jenkins Jones' son was having difficulty breathing. Ms. Jenkins Jones notified the employer prior to the scheduled start of her shift that she would

be late. If Ms. Jenkins Jones needed to be absent from work, the employer's policy required that she telephone the workplace prior to the scheduled start of her shift. Ms. Jenkins Jones called her grandmother for assistance. Ms. Jenkins Jones' grandmother transported Ms. Jenkins Jones' son to the hospital. Ms. Jenkins Jones reported for work late. Later in the day, the employer notified Ms. Jenkins Jones that she was discharged for tardiness. The next most recent absence had occurred about three weeks earlier. The earlier absence had involved another instance of Ms. Jenkins Jones' child experiencing breathing problems. Ms. Jenkins Jones had again notified the employer prior to the scheduled start of her shift.

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 evidence in the record establishes fails to establish a discharge based on a current act of misconduct. The final absence that triggered the discharge was an absence due to the illness of a dependent child. Ms. Jenkins Jones properly notified the employer of the absence. The absence was an excused absence under the applicable law and cannot be considered against Ms. Jenkins Jones when determining her eligibility for unemployment insurance benefits. The next most recent absence was also an excused absence under the applicable law. In the absence of a current act of misconduct, the administrative law judge concludes that Ms. Jenkins Jones was discharged for no disqualifying reason. Accordingly, Ms. Jenkins Jones is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's June 24, 2014, 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/pjs