

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COLE W ELSBERRY
Claimant

APPEAL NO. 21A-UI-16049-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOMATIC MACHINE PRODUCTS INC0
Employer

**OC: 04/18/21
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 13, 2021, reference 01, decision that allowed benefits to the claimant provided the claimant met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 21, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on September 9, 2021. Claimant participated. Abigail Perin represented the employer and presented additional testimony through Dave Perin . Exhibits A, B and C 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.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Automatic Machine Products, Inc. as a full-time machine operator from September 14, 2020 until February 10, 2021, when the employer discharged him from the employment. The claimant's work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday. The final incident that triggered the discharge occurred at some point during the first week of February 2021, when the claimant became ill and nearly fainted at work. The claimant's symptoms included intense chest pain. Two other employees stepped in to assist the claimant. The employer inquired whether the claimant was well enough to remain at work. The claimant determined that he was too ill to work and needed to leave. The employer was concerned about the claimant's health and attempted to persuade the claimant to leave by ambulance. The claimant elected to drive himself to his grandfather's home nearby. Once there, the claimant waited until he further recovered and then went home.

The claimant has an ongoing as-yet undiagnosed medical condition. The claimant disclosed his medical condition to the employer during the interview process.

After the incident during the first week of February, the employer insisted that the claimant consult with a doctor, undergo further testing, and allow the employer to converse with the doctor regarding whether the claimant well enough to return to work. The claimant complied with the employer's directive. After the employer spoke with the claimant's doctor, the employer notified the claimant that the employer was ending the employment. The employer deemed the incident during the first week of February to be a safety incident and decided it would be unsafe to allow the claimant to continue in the employment. The employer also deemed the claimant's departure in connection with that event to be the final absence that factored in the discharge. The claimant had been absent due to illness earlier in the employment. The employer lacks an attendance policy other than an expectation that employees request time off two weeks in advance. The claimant communicated appropriately with the employer regarding his need to be absent due to illness. The employer spoke with the claimant in December 2020 regarding his tie away from work due to illness, but thought the claimant was a skilled worker and good fit. The employer elected to extend the claimant introductory probation period at that time.

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 871 IAC 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.

The evidence in the record establishes a discharge for no disqualifying reason. The claimant's experience of becoming ill at work during the first week of February 2021 was a matter beyond the claimant's control. The claimant's health condition in no manner indicated a willful or wanton disregard of the employer's interests. The evidence fails to establish a single absence that would be an unexcused absence under the applicable law. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 13, 2021, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge was effective February 10, 2021. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

September 15, 2021
Decision Dated and Mailed

jet/ol