

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC KNEES**

Claimant

**APPEAL NO. 11A-UI-06588-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 03/27/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a representative's decision dated May 5, 2011, reference 03, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on June 15, 2011. Claimant participated personally. Although duly notified, the employer indicated that they would not be participating.

**ISSUE:**

The issue in this matter is whether the appeal filed herein was timely and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: The disqualification decision was mailed to the claimant's last-known address of record on May 5, 2011 and received by the claimant. Mr. Knees attempted to file an appeal following directions given to him by a Workforce Development representative. On May 17, 2011 the claimant was informed that the method advised by the representative was not acceptable. Mr. Knees immediately re-filed his appeal that day in one hour. The administrative law judge concludes that the failure to file a timely appeal within the timeframe prescribed by the Iowa Employment Law was due to erroneous information supplied by an agency representative. Good cause for late filing has been established.

Mr. Knees was employed by The University of Iowa from February 2009 until March 13, 2011. Mr. Knees worked as a full-time clinic technician and was paid by the hour.

The claimant was discharged on March 13, 2011 for an absence that had occurred approximately four months before on or about December 18, 2010. On that date the claimant's schedule change had been specifically authorized by an upper level supervisor and Mr. Knees reported to work following the revised schedule that had been authorized. Approximately four months later the employer determined that the change may have not been authorized by the

claimant's immediate supervisor and discharged the claimant as he had been previously warned about attendance.

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

The question before the administrative law judge is whether the evidence in the record establishes a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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.

871 IAC 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.

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 insurance benefits. Misconduct that serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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 a current act of misconduct, a discharge for misconduct cannot be based upon a past act. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer fails to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the evidence in the record establishes that Mr. Knee was discharged on March 13, 2011 for an absence that had occurred in mid December 2010. The employer was aware substantially before the claimant's termination from employment of a scheduling change that had allowed Mr. Knees to vary his work schedule in December 2010. The claimant was reasonable in believing that he was authorized to work the revised schedule as it had been authorized by upper management and the claimant had no reason to believe that following the revised schedule would result in his termination from employment.

Based upon the evidence in the record the administrative law judge concludes that the claimant was not discharged for a current act of misconduct and that the circumstances that caused the claimant's discharge from employment did not rise to the level of intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated May 5, 2011, reference 03, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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