

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**VICKI L REYNOLDS**  
Claimant

**APPEAL NO. 18A-UI-06569-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORDSTROM INC**  
Employer

**OC: 05/20/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Vicki Reynolds filed a timely appeal from the June 8, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Reynolds was discharged on May 22, 2018 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on July 2, 2018. Ms. Reynolds participated. The employer did not register a telephone number for the hearing and did not participate. The employer provided written notice on June 22, 2018 that the employer waived participation in the appeal hearing. 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: Vicki Reynolds was employed by Nordstrom, Inc. as a full-time warehouse worker until May 22, 2018, when the employer discharged her for attendance. Ms. Reynolds began her employment in 2006. The final absence that triggered the discharge occurred on May 22, 2018, when Ms. Reynolds clocked in at 6:01 a.m. for 6:00 a.m. shift. Ms. Reynolds had to make her way through two sets of doors before she could reach the time clock where she needed to clock in. On May 22, 2018, a male coworker blocked Ms. Reynolds' entry through the first set of doors despite Ms. Reynolds' request that he step aside so that she could enter the door. After the second request, the male coworker simply turned around and looked at Ms. Reynolds. Ms. Reynolds was at that point able to nudge past the coworker. After Ms. Reynolds swiped her badge at the second set of doors, another male coworker impeded her progress through the second set of doors. When Ms. Reynolds was finally through the double entry and able to clock in, she noted that the time clock has just turned to 6:01 a.m. But for the coworkers impeding her progress, Ms. Reynolds would have clocked in on time for her 6:00 a.m. shift. Mr. Reynolds made contact with her supervisor to let him know there was an issue and in an attempt to avoid being disciplined for a late clock in. Later that morning, the employer summoned Ms. Reynolds to a meeting, notified her that loss prevention staff had concluded she would not have clocked in on time despite the male coworkers impeding her progress, and notified her that she was discharged for attendance.

## 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 Iowa Administrative Code rule 871-24.32(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.

The employer waived participation in the appeal hearing and presented no evidence to meet its burden of proving a discharge for misconduct in connection with the employment. The evidence in the record establishes a discharge for no disqualifying reason. The evidence in the record establishes that the late arrival on May 22, 2018, that triggered the discharge was due to matters beyond Ms. Reynolds' control, the two coworkers who impeded her progress through the double entry and to the time clock. The employer presented no evidence to rebut Ms. Reynolds' testimony regarding the extenuating circumstances that caused her to be slightly late in clocking in on the final day of the employment. Due to the circumstance that was beyond Ms. Reynolds' control, the final absence that triggered the discharge was an excused absence under the applicable law and cannot serve as a basis for disqualifying Ms. Reynolds for unemployment insurance benefits. Ms. Reynolds is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

**DECISION:**

The June 8, 2018, reference 01, decision is reversed. The claimant was discharged on May 22, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs