IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

HEATHER M STEUCK Claimant **EAGLE WINDOW & DOOR MFG** Employer	**APPEAL NO. 24A-UI-04961-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/23/23** **Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On May 22, 2024, Heather Steuck (claimant) filed a timely appeal from the May 17, 2024 (reference 02) decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 31, 2024 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 10, 2024. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A was received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Heather Steuck (claimant) was employed by Eagle Window & Door Manufacturing as a full-time Supply Management Planner from August 2023 until February 9, 2024, when the employer discharged her from the employment. Ms. Steuck usually worked a Monday through Friday, day-shift work schedule. Ms. Steuck's position was computer-based and involved interacting with suppliers and others by email regarding supply orders. Ms. Steuck usually performed her work duties in the workplace.

From Monday, January 22, 2024 through Tuesday, January 30, 2024, Ms. Steuck worked from home due to a COVID19 diagnosis and pursuant to a discussion with her supervisor, Shawn (last name unknown). When Ms. Steuck notified her supervisor of the COVID-19 diagnosis, the supervisor told Ms. Steuck that she would need to remain away from the workplace for 10 days from the date of the initial positive COVID-19 test, which meant Ms. Steuck could return to the workplace on Wednesday, January 31, 2024. Ms. Steuck thereafter performed her work duties from home until she returned to the workplace on January 31, 2024.

On January 31, 2024, the supervisor summoned Ms. Steuck to a meeting. During the meeting, the supervisor accused Ms. Steuck of being "shady" and of not holding up her work responsibilities. The supervisor said he did not understand why Ms. Steuck had not been reporting to work. Ms. Steuck stated that she had a medical release as well as the emails with the supervisor regarding working from home until she returned on January 31, 2024. Ms. Steuck told the employer she had appropriately clocked in and out during the period when she was working from home and that her work emails would reflect performance of the work duties while she was working from home. Ms. Steuck became tearful and upset and asked to be excused from the supervisor's office. Ms. Steuck then returned to her workstation.

Later in the shift on January 31, 2024, the supervisor again summoned Ms. Steuck to a meeting. This second meeting included Mike Hill, Supply Manager. Mr. Hill started the meeting by stating that he wanted to clarify what had happened during the first meeting. Ms. Steuck stated that she had been out with COVID, that she and the supervisor had agreed she would work from home while she recovered from COVID, and that the supervisor was now not okay with the arrangement. Ms. Steuck stated that she had the documentation showing all the work she had performed from home. Mr. Hill said it was not necessary to produce the documentation. Mr. Hill stated he did not understand why Ms. Steuck had not been at the workplace. Ms. Steuck said it was because the supervisor told her she could not come to the workplace for 10 days due to the COVID-19 diagnosis. Mr. Hill then said that Ms. Steuck could have returned to the workplace after seven days if she wore a mask. Ms. Steuck said she was unaware that she could have returned after seven days and that the supervisor had said 10 days. Ms. Steuck asked how she was allegedly not holding up her end of the employment. Ms. Steuck became tearful and upset and asked to be excused. Ms. Steuck returned to her workstation.

Ms. Steuck continued to perform her work duties until Friday, February 9, 2024. On that day, the supervisor summoned Ms. Steuck to a meeting. The supervisor told Ms. Steuck that because she did not return to work after seven days in connection with the COVID diagnosis, she would no longer be employed. The supervisor then walked Ms. Steuck to her desk so she could retrieve her work computer. Mr. Hill then met with Ms. Steuck and the supervisor. Ms. Steuck showed Mr. Hill the emails between her and the supervisor regarding the work from home arrangement and about Ms. Steuck returning to the workplace after 10 days. Ms. Steuck stated she had followed what the supervisor told her to do. Mr. Hill said it did not matter and that Ms. Steuck was no longer employed with the company. The supervisor then stood up and said, "Let's go through your desk and turn your stuff into HR." Ms. Steuck complied. Ms. Steuck mentioned the computer monitors she had at home and offered to go retrieve them. The supervisor directed Ms. Steuck to return those monitors to human resources on Monday, February 12, 2024. Ms. Steuck collected her personal effects from her desk. The supervisor then escorted Ms. Steuck to the human resources office, where Ms. Steuck delivered the computer monitors from her workstation and returned her employee ID badge. The supervisor told Ms. Steuck that when she returned on February 12, 2024 with the monitors from home, she should stop at the front desk and the human resources personnel would come meet her. On February 12, 2024, Ms. Steuck returned with the monitors as directed. A human resources representative met Ms. Steuck at the front desk and escorted Ms. Steuck to the human resources office. Ms. Steuck delivered the monitors and signed to document return of the work equipment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 87124.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 87124.25.

The evidence in the record establishes that Ms. Steuck was discharged and did not voluntarily quit the employment. The employer did not participate in the appeal hearing and did not present any evidence to rebut the claimant's testimony that she was discharged from the employment on February 9, 2024.

Iowa Code section 96.5(2)(a) and (d) provides as follows:

> 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.
> …
> d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

> (1) Material falsification of the individual's employment application.
> (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
> (3) Intentional damage of an employer's property.
> (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
> (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
> (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
> (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
> (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
> (9) Excessive unexcused tardiness or absenteeism.
> (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
> (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
> (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
> (13) Theft of an employer or coworker's funds or property.
> (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text 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 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 Iowa Administrative Code rule 87124.32(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. 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 87124.32(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 February 9, 2024 discharge for no disqualifying reason. The employer did not participate in the appeal hearing and presented no evidence to meet its burden of proving a disqualifying separation from the employment. The evidence establishes the claimant performed her work duties in good faith and to the best of her ability. The evidence establishes that during the period of January 22, 2024 through January 30, 2024, the claimant performed her work duties from home due to a COVID-19 diagnosis and pursuant to the supervisor's instruction. The evidence establishes no absences within the meaning of the law and no unexcused absences within the meaning of the law. The claimant returned to the workplace on January 31, 2024 as instructed and continued to perform her work duties in good faith and to the best of her ability until the February 9, 2024 discharge. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 17, 2024 (reference 02) decision is REVERSED. The claimant was discharged on February 9, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

June 11, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:
1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En linea: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:
1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.