IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GARY W WOODS
Claimant

RYDER INTEGRATED LOGISTICS INC
Employer

APPEAL NO. 17R-UI-07880-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/07/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

This matter is before the administrative law judge for a new hearing based on the Employment Appeal Board remand in Hearing Number 17B-UI-06129. Gary Woods filed a timely appeal from the June 12, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Woods was discharged on May 10, 2017 for excessive unexcused absences. After due notice was issued, a hearing was held on August 21, 2017. Mr. Woods participated. Jenna Tate represented the employer.

ISSUE:

Whether Mr. Woods separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gary Woods was employed by Ryder Integrated Logistics, Inc., as a full-time material handler from 2011 and last performed work for the employer on November 8, 2016. During the last four years of the employment, Ms. Woods' work duties were clerical and sedentary in nature. Mr. Woods underwent a left hip replacement in 2006. During the period of the employment, Mr. Woods was suffering from osteoarthritis in his left hip. The employer provided Mr. Woods with sedentary work as an informal accommodation. In June 2016, the employer formalized and continued the medical accommodation. In August 2016, Mr. Woods had applied for and been approved for intermittent leave under the Family and Medical Leave Act (FMLA) so that he could to Mayo Clinic for medical treatment. Prior to that application, Mr. Woods would make an annual application for FMLA.

On November 8, 2016, Mr. Woods commenced an approved short-term medical leave of absence so that he could undergo an injection in his right hip. Mr. Woods and his doctor anticipated that Mr. Woods would return to work after a brief recovery period. However, things did not go as planned. Within a couple days of the injection and the beginning of the absence from work, Mr. Woods learned that his recovery would take longer than expected. By mid-November 2016, Mr. Woods knew that he would need to undergo surgery on his right hip. In November 2016, Mr. Woods complied with the employer's leave of absence protocol by

contacting the employer's short-term disability provider, Liberty Mutual. Liberty Mutual approved Mr. Woods for short-term disability benefits for the period of November 8, 2016 through May 8, 2017.

Toward the end of December 2016, Mr. Woods underwent surgery on his right hip. During the second week of January 2017, Mr. Woods exhausted his 12-weeks of FMLA leave. Mr. Woods did not maintain regular or periodic contact with the employer and the employer did not require such contact. Mr. Woods deferred to his doctor to provide information to Liberty Mutual in continued support of Mr. Woods' need to be off work.

On April 3, 2017, Mr. Woods underwent a surgery on his left hip to replace the socket of his artificial hip. At that point, Mr. Woods and his doctor anticipated that Mr. Woods would be in a position to be released to return to work in six to 12 weeks.

On April 20, 2017, Mr. Woods called the employer's human resources department and spoke with Jenna Tate, Human Resources Coordinator. Ms. Tate was a relatively new member of the human resources department. At the time of the contact, Mr. Woods was still approved by Liberty Mutual for short-term disability benefits through May 8, 2017 and, through that short-term-disability approval, still on an approved leave of absence. At the time of the April 20 call, Mr. Woods told Ms. Tate that his next medical appointment was scheduled for May 18, 2017 and that he would update Ms. Tate after that appointment. In other words, Mr. Woods knew he was not going to be released to return to the employment by the time the short-term disability benefits expired.

On May 2, Mr. Woods contacted Ms. Tate by email to ask whether his previous position would be available to him upon his release to return to work. Ms. Tate did not respond to the message. Instead, Ms. Tate conferred with Human Resource Representative Jordan Vanderville. Ms. Tate initially conferred with Ms. Vanderville for assistance in accessing information concerning when Mr. Woods' short-term disability leave would expire. With guidance from Ms. Vanderville, Ms. Tate was able to confirm that the short-term benefits would expire on May 8, 2017. At about the same time, Mr. Woods was in contact with Liberty Mutual and learned that upon expiration of the short-term disability benefits, Liberty Mutual would commence paying long-term disability benefits under a payment structure different from the short-term disability payment structure.

On or shortly before May 10, 2017, Ms. Tate conferred with Ms. Vanderville regarding Mr. Woods' exhaustion of short-term benefits. Ms. Vanderville instructed Ms. Woods to direct Mr. Woods to immediately obtain a note from his doctor releasing him to return to the employment. Ms. Vanderville instructed Ms. Tate to notify Mr. Woods that if he was not released, the employer would have to terminate the employment. Ms. Vanderville instructed Ms. Tate to advise Mr. Woods that he would be eligible for rehire once he was released by his doctor to return to work. Ms. Tate contacted Mr. Woods as instructed and conveyed the information. Ms. Tate told Mr. Woods that she needed the release that same day. Mr. Woods agreed to contact his doctor, but was unable to obtain any type of medical release within the brief time frame specified by Ms. Tate. When Mr. Woods was unable to produce the release by May 10, 2017, the employer terminated the employment. The employer's corporate office sent Mr. Woods a letter to formally notify him that the employer had ended the employment.

On May 12, Mr. Woods obtained a medical release from his primary care doctor. The release stated that Mr. Woods would need to alternate between sitting and standing for two weeks. Mr. Woods contacted the employer's human resources department to discuss the release. When Ms. Tate was not available to take the call, Mr. Woods spoke with another human resources representative who told him he could not return to the employment without a full release containing no restrictions.

On May 18, Mr. Woods had a follow up appointment with the surgeon. At that time, the surgeon released Mr. Woods to return to the same duties he had performed prior to the leave of absence that started November 8, 2016.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides 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 871 IAC 24.25.

In *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.,* 810 N.W.2d 532 (Iowa Ct. App. 2012), the claimant, who had been injured in a non-work related automobile accident had requested a leave of absence so that she could recover from her injury. The employer approved the initial request. The employer also approved an extension of the leave of absence. The employment ended when the employer decided to terminate the employment, rather than grant an additional extension of the leave of absence. The claimant had not yet been released to return to work at the time the employer deemed the employment terminated. The Iowa Court of Appeals held that Ms. Jackson had not voluntarily quit the employment. The Iowa Court of Appeals further held that since Ms. Jackson had not voluntarily quit, she was not obligated to return to the employer upon her recovery to offer her services in order to be eligible for unemployment insurance benefits. The effect of the court's decision was to treat the separation as a discharge from the employment.

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 a discharge 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 weight of the evidence in the record establishes a May 10, 2017 discharge for no disqualifying reason. The outcome in this case is governed by the ruling in *Prairie Ridge*. Mr. Woods was on an approved leave of absence through May 8, 2017. Prior to the end of the approved leave period, Mr. Woods notified the employer that the soonest he would be released to return to work would be May 18, 2017, the date of his follow up appointment with the surgeon following the most recent surgery in April. Rather than provide a brief extension of the leave, the employer elected to impose an unreasonable requirement that Mr. Woods provide a medical release allowing him to return to work on May 10, 2017. When Mr. Woods was unable to produce the release, the employer discharged Mr. Woods from the employment. Had the employer not imposed the unreasonable expectation that Mr. Woods return to work prior to being released by his physician to do so, Mr. Woods would have been ready to return to his previous duties as of May 23, 2017. Because the employer discharged Mr. Woods from the employment, he was under no obligation to return to the employer to offer his services subsequent to the discharge. Nonetheless, the evidence establishes that Mr. Woods was at all relevant times eager to return to the employment.

Because the evidence establishes a discharge for no disqualifying reason, Mr. Woods is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 12, 2017, reference 01, decision is reversed. The claimant was discharged on May 10, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided he 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