

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JOSE A GONZALEZ**

Claimant

**APPEAL NO. 18A-UI-06891-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RYDER INTEGRATED LOGISTICS INC**

Employer

**OC: 07/09/17**

**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 14, 2018, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 30, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on July 11, 2018. Claimant Jose Gonzalez participated. Karen Stonebraker of Equifax represented the employer and presented testimony through Jenna Tate. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Gonzalez was employed by Ryder Integrated Logistics, Inc. as a full-time material handler from January 2018 until May 31, 2018, when the employer discharged him for attendance. Mr. Gonzalez's regular work hours were 6:00 a.m. to 2:00 p.m., Monday through Friday. Mr. Gonzalez was also required to work overtime shifts as needed and with notice from the employer. Katherine Steege, Customer Logistics Manager, was Mr. Gonzalez's supervisor.

The employer reviewed its attendance policy with Mr. Gonzalez at the time of hire. Under the policy, Mr. Gonzalez was required to notify his supervisor at least 30 minutes prior to the scheduled start of the shift if he needed to be absent or late. If Mr. Gonzalez needed to leave early, he was required under the policy to notify his supervisor. In connection with each absence, Mr. Gonzalez was required to document that he had used available paid time off and to ensure that he had available time off. Mr. Gonzalez was at all relevant times familiar with the attendance policy.

The final absence that triggered the discharge occurred on May 29, 2018, when Mr. Gonzalez was absent from work so that he could care for his two-year-old son and his eight-month-old daughter, both of whom were ill and, therefore, could not go to daycare. Mr. Gonzalez delayed notifying the employer until 5:45 to 5:50 a.m. in the hope that he would be able to locate a substitute caregiver for his children and would be able to report for work. Mr. Gonzalez was aware at the time that his employment was in jeopardy due to attendance. Mr. Gonzalez's girlfriend, the mother of the children, needed to report for work that day and the couple decided that Mr. Gonzalez would stay home with the children if necessary. Mr. Gonzalez appeared for work on May 30. That morning, Ms. Steege notified Mr. Gonzalez that he was suspended and sent him home. The discharge followed the next day.

The employer considered prior absences and reprimands when making the decision to discharge Mr. Gonzalez from the employment. On February 21, Mr. Gonzalez was absent due to illness, but notified the employer at 5:35 a.m., rather than 30 minutes prior to the scheduled start of the shift. On April 2, 2018, Mr. Gonzalez was not late, but instead failed to clock in until 7:59 a.m. On April 10, Mr. Gonzalez was late for work for personal reasons. Mr. Gonzalez was running late and needed to drop off his children at daycare before he reported to work. Mr. Gonzalez provided timely notice to the employer. On April 21, 2018, Mr. Gonzalez worked up late and did not arrive for work until 6:16 a.m. In connection with each of the absences that factored in the discharge, the employer issued a verbal or written warning to Mr. Gonzalez.

Mr. Gonzalez had established an original claim for benefits in July 2017 and last received benefits in connection with the claim in November 2017. In connection with the separation from Ryder, Mr. Gonzalez established an additional claim for benefits that Iowa Workforce Development deemed effective May 27, 2018. Mr. Gonzalez has received no benefits in connection with that additional claim.

## **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). 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 evidence in the record establishes a discharge for misconduct in connection with the employment based on excessive unexcused absence. The final absence on May 29 was an unexcused absence. Though the absence was due to Mr. Gonzalez's need to care for his sick children, he did not notify the employer in a timely manner. The evidence established an unexcused absence on February 21. Though Mr. Gonzalez was absent due to illness, he did not notify the employer in a timely manner. The evidence establishes unexcused absences in the form of tardiness on April 10 and 21, when Mr. Gonzalez was late for personal reasons. Mr. Gonzalez was acutely aware, prior to the May 29 final absence, that his employment was in jeopardy due to attendance issues. Mr. Gonzalez's unexcused absences were excessive.

Because the evidence in the record establishes a discharge for misconduct in connection with the employment, Mr. Gonzalez is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Gonzalez must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because Mr. Gonzalez has not received unemployment insurance benefits in connection with the May 27, 2018 additional claim, there is no overpayment issue to address in this matter.

**DECISION:**

The June 14, 2018, reference 03, decision is reversed. The claimant was discharged for misconduct in connection with the employment based on excessive unexcused absences. The discharge was effective May 31, 2018. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs