

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSANDRA L ENGEN
Claimant

APPEAL NO. 17A-UI-07366-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTEGRATED DNA TECHNOLOGIES INC
Employer

OC: 06/18/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Cassandra Engen filed a timely appeal from the July 11, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Engen was discharged on June 20, 2017 for excessive unexcused absences. After due notice was issued, a hearing was held on August 9, 2017. Ms. Engen participated. Renae Hubbard, Payroll Administrator, represented the employer.

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: Cassandra Engen began her employment with Integrated DNA Technologies, Inc. in 2001 and was a full-time Quality Control Analyst 2, with an annual salary of about \$70,000.00, when Assistant Manager Kim Partin discharged her for attendance on June 20, 2017. Assistant Manager Anita Franklin communicated the discharge decision to Ms. Engen on June 21, 2017. Ms. Partin became Ms. Engen's immediate supervisor in October 2016. Ms. Engen's work hours were 11:00 p.m. to 8:00 a.m. Ms. Engen's work week began on Sunday evening and ended on Friday morning. The workplace was located in Coralville. Ms. Engen resided in Cedar Rapids at all relevant times. Ms. Engen was responsible for providing her own transportation to the workplace.

In April 2017, Ms. Engen operated her car at a time when her driving privileges were suspended. Ms. Engen was stopped by law enforcement and her car was impounded. Ms. Engen's driving privileges had been suspended for nonpayment of a fine following a November 2016 incident wherein Ms. Engen operated her car with expired registration. After Ms. Engen's car was impounded, she had to hire transportation in one form or another to get to and from work.

If Ms. Engen needed to be absent from or late for work, the departmental absence reporting policy required her to notify Ms. Partin prior to the start of the shift by telephone call, text or email. Ms. Engen was aware of this requirement.

The final absence that triggered Ms. Engen's discharge from the employment occurred on June 20, 2017, when Ms. Engen was absent due to lack of transportation. This absence followed a late arrival on June 18 that was also due to transportation issues. On June 19, Ms. Partin told Ms. Engen that her employment would be terminated if she missed any more work. On June 20, Ms. Engen initially notified the employer that she would be late due to transportation problems. Ms. Engen subsequently notified the employer that she would be absent for her entire shift due to a lack of transportation. On June 20, 2017, Ms. Engen had experienced Internet connectivity problems when she attempted to access the Lyft transportation service to reserve a ride from Cedar Rapids to Coralville.

In March 2017, Ms. Partin had issued a written reprimand to Ms. Partin for attendance. The reprimand referenced absences going back to January 30, 2017. On January 30, Ms. Engen left work early due to illness. Ms. Engen spoke to Ms. Partin about her need to leave before Ms. Engen left the workplace. On January 31 and February 2, Ms. Engen was absent due to illness and properly notified Ms. Partin. On February 22, Ms. Engen left work early after she learned that a former roommate had burglarized her home during Ms. Engen's shift. On February 23, 2017, Ms. Engen was absent. On that day, Ms. Engen notified the employer that she could not come to work because she lacked gasoline for car. Ms. Engen was absent on March 6. The employer witness lacks further information regarding that absence. Ms. Engen speculates that she ill that day, but lacks further information regarding the absence. On March 7, 2017, Ms. Engen left work early after she learned that her home had again been burglarized by a former roommate. Ms. Engen elected not to involve law enforcement in either burglary incident. On March 8, 2017, Ms. Engen was absent due to illness. The employer witness lacks further information regarding the absence and Ms. Engen cannot recall the absence.

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 weight of the evidence in the record establishes a June 20, 2017 discharge that was based on excessive unexcused absences. Both the June 18 tardiness and the June 20 absence were based on self-inflicted transportation issues. Each was an unexcused absence under the applicable law. Ms. Engen had previously lost her driving privileges because she violated the law and then failed to pay a fine, despite having an income that a reasonable person would conclude was sufficient to fulfill the financial obligation. Ms. Engen made her self-inflicted transportation issues worse when she operated her vehicle at a time her driving privileges were suspended. Ms. Engen's assertion that she did not know her driving privileges were suspended is not credible. In any event, this further violation of the law prompted law enforcement to impound Ms. Engen's vehicle. Thus, Ms. Engen took a number of steps to make it more difficult for her report for work. Though the employer lacked complete attendance records at the time of the hearing and the employer witness lacked personal knowledge of the matters in question, the evidence establishes an additional unexcused absence on February 23, 2017, when Ms. Engen was absent due to a purported lack of gasoline for her vehicle. That absent was addressed as part of the March 2017 reprimand for attendance. The employer presented insufficient evidence to prove, by a preponderance of the evidence, additional unexcused absences.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Engen was discharged for misconduct. Accordingly, Ms. Engen is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Engen must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The July 11, 2017, reference 01, decision is affirmed. The claimant was discharged on June 20, 2017 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs