

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J CORNICK
Claimant

APPEAL NO. 17A-UI-04687-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 04/02/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Patrick Cornick filed a timely appeal from the May 1, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Cornick had been discharged on March 8, 2017 for violation of a known company rule. After due notice was issued, a hearing was held on May 22, 2017. Claimant participated. Angi Reisdorf represented the employer and presented additional testimony through Jamie Henkes. Exhibits 1 through 7 and A were 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: Patrick Cornick was employed by REM Iowa Community Services, Inc., as a full-time Program Coordinator until March 8, 2017, when Angi Reisdorf, Area Director, and Jamie Henkes, Program Director, discharged him from the employment. Ms. Henkes was Mr. Cornick's immediate supervisor. Mr. Cornick began the employment in 2009 as a Director Support Professional and soon was promoted to the position of Program Coordinator. Mr. Cornick's duties included supervising and training five to eight Direct Support Professionals.

Ms. Reisdorf and Ms. Henkes suspended Mr. Cornick on February 24, 2017 in response to his late arrival for work on that day. On that day, Mr. Cornick was supposed to train a new employee at the home shared by three disabled adults. Mr. Cornick showed up two hours late. Mr. Cornick was late for personal reasons and had not notified Ms. Henkes that he would be late. The employer's policy required that Mr. Cornick notify Ms. Henkes at least four hours prior to the scheduled start of his shift if he needed to be absent or late. Mr. Cornick was familiar with the policy. Mr. Cornick had arrived late for a 9:00 a.m. meeting with Ms. Henkes on February 23 without notice that he would be late. Once there, he told Ms. Henkes that he did not feel well. Mr. Cornick did appear ill at the time. Mr. Cornick was scheduled to train the same new employee that day and provide support to the same three disabled clients.

Ms. Henkes authorized Mr. Cornick to leave work once he found someone to replace him at the disabled clients' home. Mr. Cornick disregarded that directive. Mr. Cornick went home, then secured someone who he knew could not come to the workplace until hours later. The other employee did not arrive until 1:00 or 1:30 p.m. The disabled clients and the new employee were left without appropriate support during that time. Mr. Cornick had also been an hour late for personal reasons on February 15, 2017. Mr. Cornick arrived at 9:00 a.m. that day after agreeing to an 8:00 a.m. start time. On December 19, 2016, Mr. Cornick was absent because he had lost the key fob to his car. The employer considered additional earlier absences and reprimands when making the decision to discharge Mr. Cornick from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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 suspension and discharge based on excessive unexcused absences. Each of the absences between December 19 and February 24 was an unexcused absence under the applicable law. On December 19, Mr. Cornick was absent due to a self-inflicted transportation issue and elected to unnecessarily miss an entire day of work in connection with the issue. On February 15, Mr. Cornick was late for personal reasons when he purportedly forgot his 8:00 a.m. start time. On February 23, 2017, Mr. Cornick was late to a meeting and then left work early due to purportedly illness, but did so without following Ms. Henkes' directive to make certain that the new employee and disabled clients were properly supported. On February 24, Mr. Cornick was two hours late without notice to the employer and left the new employee and the disabled clients without appropriate support. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Cornick was suspended and discharged for misconduct in connection with the employment. Accordingly, Mr. Cornick 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. Cornick must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The May 1, 2017, reference 01, decision is affirmed. The claimant was suspended on February 24, 2017 and discharged on March 8, 2017 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs