

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURALIE A CORPRON

Claimant

APPEAL NO. 13A-UI-13557-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/12/13

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Lauralie Corpron filed a timely appeal from the December 9, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 6, 2014. Ms. Corpron participated and presented additional testimony through Ryan Beattie. Robert Cooper represented the employer. Exhibits One through Seven 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: Lauralie Corpron was employed by Casey's Marketing Company as a part-time clerk from August 17, 2013 until November 1, 2013, when Robert Cooper, Store Manager, discharged her for attendance. Mr. Cooper was Ms. Corpron's immediate supervisor.

The final absence that triggered the discharge occurred on October 25, 2013, when Ms. Corpron was absent and did not notify the employer of her need to be absent. Ms. Corpron was on the schedule to work from 4:00 a.m. to 10:00 a.m. The schedule had been posted on October 19, 2013. After the schedule was posted, Ms. Corpron worked October 20, 22 and 23.

The employer has a written attendance policy in its employee handbook. The employer maintained a copy of the handbook in the store where Ms. Corpron worked so that she could access it as needed. At the start of the employment, the employer had Ms. Corpron sign her acknowledgement that the employee handbook had been made available for her review and that she understood she was responsible for reading the handbook and asking questions of her supervisor if she had any questions based on the handbook. The written attendance policy addressed scheduled absences and unscheduled absences. With regard to unscheduled absences, the policy requires that a manager/supervisor be notified prior to the scheduled start of the shift.

In making the decision to discharge Ms. Corpron from the employment, the employer also considered her absence on October 14, 2013. On that day, Ms. Corpron telephoned a coworker prior to the scheduled start of Ms. Corpron's shift to advise that she would be absent from work. Ms. Corpron also left a message for Mr. Cooper prior to the scheduled start of her shift. In her message, Ms. Corpron told Mr. Cooper that her aunt had died. Ms. Corpron asked for a return call. Ms. Corpron did not indicate in her message that she would be absent from work. On October 21, Mr. Cooper issued a written reprimand to Ms. Corpron based on the October 14 absence.

In making the decision to discharge Ms. Corpron from the employment, the employer considered that Ms. Corpron's absences had occurred while Ms. Corpron was still within the first 90 days of her employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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 two unexcused absences that occurred on October 14 and October 25. First absence was unexcused, because the claimant failed to notify the supervisor prior to the shift that she would be absent from the shift. The second absence was a no-call, no-show absence. Given the circumstances of the absence, these two absences did not rise to the level of excessive unexcused absences and did not constitute misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's December 9, 2013, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs