IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHAYLEA B RINNELS
Claimant

DIMENSIONAL GRAPHICS CO
Employer

APPEAL NO. 15A-UI-00694-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/28/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Shaylea Rinnels filed a timely appeal from the January 15, 2015, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on February 11, 2015. Ms. Rinnels participated. Dana Maxwell represented the employer and presented additional testimony through Bobby James, Alisha Frein, and Jeremy Latham. Exhibits One through Seven and B 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: Shaylea Rinnels was employed by Dimensional Graphics Company as a full-time production worker from August 4, 2014 until December 29, 2014 when Dana Maxwell, Assistant Plant Manager, discharged her from the employment for missed time clock entries and attendance. Ms. Rinnels work hours were 6:00 a.m. to 2:30 p.m., Monday through Friday. Ms. Rinnels' immediate supervisor was Alisha Frein, Production Supervisor. Ms. Rinnels was required to clock in at the start of her shift, clock out before going on lunch break, clock back in after lunch break, and clock out before leaving that the end of her shift. To clock in or out, Ms. Rinnels had to enter her personal identification code on a computer located in her work area. The computer screen would indicate whether the clock in or clock out information was accepted. Ms. Rinnels was sometimes in a hurry when clocking in or out and did not always check the computer screen to confirm whether the computer had accepted her time clock entries.

The final incident that triggered the discharge occurred on December 23, 2014 when Ms. Rinnels forgot to clock out at lunch for the third time. Ms. Rinnels realized her error when she clocked back in after lunch and noted in the system that she had forgotten to clock out. Ms. Rinnels also reported the incident to Ms. Frein. Ms. Rinnels had also forgotten to clock out for lunch on August 12 and September 23.

The employer includes missed time clock entries into to its attendance policy and assigns one-half of an attendance point to missed time clock entries. The employer has a no-fault attendance policy. The employer does not solicit or document information concerning the reason for an employee's absences. The employer assigns points under its point system to all absences. If an employee needs to be absent from work, the employer requires that the employee telephone the employer at least two hours prior to the scheduled start of the shift. The employer assigns one attendance point to reported absences and two attendance points to no-call, no-show absences. An employee who reached six attendance points is subject to being discharged from the employment. Ms. Rinnels was aware of the employer's attendance policy, including the absence reporting policy.

The most recent absence that factored in the discharge occurred on December 11, 2014 when Ms. Rinnels was absent due to an infected tooth. Ms. Rinnels properly reported the absence and provided a doctor's note to support her need to be absent.

The employer considered five additional absences in making the decision to discharge Ms. Rinnels from the employment. On September 3 Ms. Rinnels left work early to care for her sick child after Ms. Rinnels' daycare telephoned the workplace to notify Ms. Rinnels that her child had a high fever, was vomiting and could not remain at the daycare. Ms. Rinnels spoke to Ms. Frein about her need to leave before she departed early from the workplace. On September 4 Ms. Rinnels' was absent from her shift to care for her sick child and properly reported the absence to the employer. On September 17 Ms. Rinnels was left work at her scheduled noon lunch time and returned at 1:11 p.m. Ms. Rinnels needed the additional time at the noon break so that she could take her child to the doctor. Ms. Rinnels had completed a time off request form and Ms. Frein had told her that the time off had been approved. On September 19 Ms. Rinnels was absent with proper notice to the employer for a reason that neither she nor the employer can recall. On September 29 Ms. Rinnels clocked out one minute early without permission.

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).

While the employer's attendance point system assigns points to missed punches, the unemployment insurance law distinguishes between absences and other potential forms of misconduct such as a pattern of carelessness or negligence. 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 all of Ms. Rinnels absences except the one-minute early clock out on September 29 were excused absences under the applicable law. Accordingly, only the one-minute early departure on September 29 was an unexcused absence under the law and the administrative law judge may only consider that absence when determining whether the evidence establishes misconduct in connection with the employment based on excessive unexcused absences. That single unexcused absence was insufficient to establish misconduct in connection with the employment based on attendance. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

The missed punches were instances of carelessness on the part of Ms. Rinnels. Given the fact that Ms. Rinnels would have to use same timekeeping system close to 400 times during the course of her employment, these few timekeeping errors with long intervening periods of successful use of the timekeeping system, are insufficient to establish a pattern of carelessness indicating a wanton and/or willful disregard of the employer's interests. In other words, these isolated lapses in use of the employer's timekeeping system did not rise to the level of misconduct.

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

DECISION:

The January 15, 2015, reference 01, 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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