

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANELLE L CRANDALL
Claimant

APPEAL NO. 10A-UI-09473-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUAD CITY HUMAN RESOURCE
Employer

OC: 05/30/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Danelle Crandall filed a timely appeal from the June 23, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 19, 2010. Ms. Crandall participated. Robert Olvera-Fout, Project Manager, represented the employer.

ISSUE:

Whether Ms. Crandall 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: Danelle Crandall was employed by Quad City Human Resource Company on a full-time basis from 2007 until May 11, 2010, when Mike Olds, Director of Human Resources, discharged her for attendance. Ms. Crandall worked both in an office and as a warehouse forklift driver. Ms. Crandall would generally start her day in the office and then move out to the warehouse. Ms. Crandall started work at 7:00 a.m. While Ms. Crandall was “scheduled” to work until 3:30 p.m., Ms. Crandall was frequently required to work later than that, and the employer deemed her workday to be done only when her supervisor decided the day’s work was done. Ms. Crandall’s immediate supervisor was Chrissie Short. Wayne Christopher supervised the warehouse. Ms. Crandall would ordinarily check with Ms. Short to determine whether it was okay to leave for the day. Ms. Crandall’s parental responsibilities generally prevented her from being available for work past 5:00 p.m.

The final incident that triggered the discharge was Ms. Crandall’s departure from the workplace at 5:00 p.m. on May 10, 2010. Ms. Crandall had started her workday at 7:00 a.m. The rest of the crew completed their workday at 5:40 p.m. Ms. Crandall’s parental responsibilities prevented her from being available for work past 5:00 p.m. that day. Ms. Crandall left work without speaking with Ms. Short or another supervisor. On May 11, 2010, Ms. Short returned to the workplace at her scheduled start time and worked a couple hours before Mr. Olds summoned her to a meeting and discharged her from the employment.

In making the decision to discharge Ms. Crandall from the employment, the employer considered multiple prior warnings for attendance. The employer issued 13 reprimands to Ms. Crandall for attendance between March 12, 2008 and February 10, 2010. The employer was unable to provide the dates and details of absences that prompted all but one of the reprimands. Only for the reprimand issued February 10, 2010, was the employer able to provide specific dates when Ms. Crandall was late for work. Ms. Crandall was late to work on January 11, 12, 13, 18, 19, 20, 25, and 27.

The next most recent absence prior to May 10, 2010 that factored in the discharge occurred on April 2, 2010, when Ms. Crandall was absent due to illness properly reported to the employer. If Ms. Crandall needed to be absent from work, the employer's attendance policy required that she telephone a supervisor two hours prior to the scheduled start of her shift. The next most recent absence prior to April 2, 2010 occurred March 23, 2010, when Ms. Crandall was absent for personal reasons. The employer was unable to provide dates for any other specific absences that factored into the discharge.

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).

The weight of the evidence in the record indicates that Ms. Crandall had worked a full day on May 10, 2010 before she left work at 5:00 p.m. At that point, Ms. Crandall had worked a 10-hour day. The administrative law judge concludes under the circumstances, including Ms. Crandall's parental responsibilities and the employer's knowledge of those responsibilities, that the employer's failure to provide a time-specific quitting time, and the employer's expectation that Ms. Crandall work past 5:00 p.m. on May 10, 2010 was unreasonable and cannot be used as the basis for finding an unexcused absence. Given the number of hours Ms. Crandall had worked, the administrative law judge cannot conclude that Ms. Crandall left work *early*. The administrative law judge concludes, for unemployment insurance purposes, there was no unexcused absence on May 10, 2010. Having reached that conclusion, the evidence fails to establish the current act of misconduct necessary to disqualify Ms. Crandall for unemployment insurance purposes. See 871 IAC 24.32(8). In the absence of a current act of misconduct, the administrative law judge need not consider the prior absences or warnings. See 871 IAC 24.32(8). Nonetheless, the administrative law judge notes the most recent unexcused absence had occurred on March 23, 2010 and further notes that the employer established a factual basis only for one prior reprimand for attendance.

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

DECISION:

The Agency representative's June 23, 2010, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw