

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER M BRUMMETT
Claimant

WASHINGTON COUNTY HOSPITAL
Employer

APPEAL NO. 21A-UI-08364-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2021, reference 02, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on February 16, 2021 "for excessive unexcused absenteeism and tardiness after being warned." After due notice was issued, a hearing was held on June 7, 2021. Claimant participated. Tracy Ousey represented the employer. Exhibits A, B and C 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: The claimant was employed Washington County Hospital as a full-time Patient Account Representative from January 13, 2021 until February 18, 2021, when the employer discharged her for attendance. Lynn Wright, Manager of Patient Accounts, was the claimant's supervisor. The claimant's work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. During the hiring process, the claimant disclosed to the employer that she had an ongoing health issue that she believed was sufficiently resolved for her to commence new employment. The claimant's ongoing health issue became a significant factor in the claimant's attendance and discharge from the employment. If the claimant needed to be absent from work, the employer's written attendance policy required that the claimant notify her supervisor as soon as possible. The policy did not specify the particular form or forms of acceptable notice. The employer reviewed the attendance policy with the claimant as part of her orientation and provided the claimant with online access to the policy.

The employer cites an early departure on February 16, 2021 as the final absence that triggered the discharge. On that day, the claimant clocked and left her work area at 10:55 a.m. Prior to leaving her work area, the claimant sent a text message to her supervisor in which she advised that she was not feeling well and was heading to the onsite emergency room. The claimant at

the emergency room around 2:00 p.m. and was in contact with her supervisor at that time. The supervisor asked how the claimant was doing. The claimant advised that she was not well and that she was going home. The claimant had been sick to her stomach and had vomited.

After the early departure on February 16, 2021, the claimant was next scheduled to work on February 17, 2021. On February 14, the claimant had notified her supervisor that she had a medical appointment on the morning of February 17, that the medical appointment was set for 10:00 a.m., and that she would report for work after the appointment. At 10:11 a.m. on February 17 2020, the claimant sent a text message to the supervisor. The claimant advised that her medical appointment has just ended and that she would be absent for the remainder of the shift.

The above absences followed earlier absences that factored in the discharge decision. On February 9, 2021, the claimant reported for work at 10:20 a.m. The claimant had given her supervisor notice that she had a medical appointment scheduled for that morning at the University of Iowa Hospitals & Clinics and would report for work at 10:00 a.m. The medical appointment concluded at 9:30 a.m. The claimant's commute from the UIHC to the workplace in Washington was about 35 minutes. At 9:30 a.m., the claimant notified her supervisor that the appointment had concluded and that she would report for work as soon as possible.

On January 27, February 4 and February 5, 2021, the claimant was absent due to illness and notified the employer prior to the scheduled start of the shift.

On January 26, 2021, the claimant was absent due to inclement weather conditions that made highway travel unsafe. The claimant notified her supervisor at 6:30 a.m. that she would be absent from her shift

The employer did not issue any warning or reprimands to the claimant prior to discharging the claimant from the employment. At the time of the discharge, the supervisor commented on the brevity of the employment and the significant number of absences during that brief period.

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 Iowa Administrative Code rule 871-24.32(4).

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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(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 a discharge for no disqualifying reason. The employer presented insufficient evidence to rebut the claimant's testimony and insufficient evidence to prove any absences that would be unexcused absences under the applicable law. The employer's sole witness for the hearing lacked personal knowledge of the matters that factored in the discharge. The parties are in agreement that no warnings or reprimands preceded the discharge. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

This matter will be remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work since she established the additional claim for benefits that Iowa Workforce Development deemed effective February 14, 2021.

DECISION:

The March 23, 2021, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

REMAND:

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work since she established the additional claim for benefits that Iowa Workforce Development deemed effective February 14, 2021.



James E. Timberland
Administrative Law Judge

July 9, 2021
Decision Dated and Mailed

jet/kmj