

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MISTI A TAYLOR
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 21A-UI-23267-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/05/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Misti Taylor, filed a timely appeal from the October 8, 2021, reference 01, 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 July 27, 2021 for repeated tardiness after being warned. After due notice was issued, a hearing was held on December 10, 2021. The claimant participated. The employer did not comply with the hearing notice instructions to call 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 as a full-time Food Service Leader at the Casey's store in Dyersville until July 29, 2021, when the recently appointed Store Manager discharged from the employment, ostensibly for attendance. Due to a staffing shortage, the claimant was working in excess of 100 hours during every two-week pay-period. At one point, the area supervisor advised the claimant that overtime pay was not available and to compensate by amending her schedule as needed. When that provided unworkable, the area supervisor reversed course, reauthorized overtime, and the claimant continued working the long hours.

The final absence that triggered the discharge occurred on July 29, 2021. The claimant was scheduled to work at 11:00 a.m. that day. The claimant was in a motor vehicle wreck that morning as part of a domestic assault situation in which the claimant was the victim. The wreck included the claimant's car rolling over with the claimant inside. At 7:45 a.m., the claimant notified the Store Manager of the wreck. The claimant told the Store Manager that she was planning to come to work, was "pretty beat up," and might need help performing her work duties. The claimant sent photos of her damaged car to the supervisor. At 10:30 a.m., the Store Manager sent a text message asking when the claimant would be arriving for work. The

claimant advised that she was trying to get ready, but that she was still dealing with the police. The claimant arrived at 1:00 p.m., at which time the Dyersville Store Manager and a Store Manager from another store discharged her from the employment.

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 did not participate in the appeal hearing and did not present any evidence to meet the employer's burden of proving a discharge based on misconduct in connection with the employment. The evidence establishes that the final absence that factored in the discharge, the late arrival on July 29, 2021, was due to matters outside the claimant's control. The claimant had provided the employer with reasonable and appropriate notice of her circumstances and of her need to report late for her shift. The July 29, 2021 absence was an excused absence under the applicable law. The evidence establishes no unexcused absences and no misconduct in connection with the employment. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The October 8, 2021, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge was effective July 29, 2021. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

January 13, 2022
Decision Dated and Mailed

jet/mh