

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SAMANTHA K MORIN
Claimant

APPEAL NO. 18A-UI-10818-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

OC: 09/23/18
Claimant: Respondent (2)

Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 22, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on August 31, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on November 15, 2018. Claimant Samantha Morin participated. Leanne Wagner represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 5 into evidence. The materials submitted for and created in connection with the October 15, 2018 fact-finding interview were not available to the Appeals Bureau. In light of the fact that no medical documentation was submitted as evidence for the hearing, the administrative law judge concludes that there is not good cause to seal any portion of the hearing record.

ISSUES:

Whether Ms. Morin was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Samantha Morin was employed by Archer Daniels Midland Company (ADM) as a full-time Process Lab Technician at the ADM plant in Cedar Rapids. Ms. Morin began the employment in 2016 and last performed work for the employer on May 24, 2018.

The employer has a written attendance policy that Ms. Morin most recently reviewed and acknowledged in February 2018. Under the attendance policy, Ms. Morin was required to call a designated absence reporting number and speak to a plant guard regarding her need to be absent or late. Under the policy, Ms. Morin was required to make the call no later than 15 minutes after the scheduled start of her shift. The policy warned that failure to follow the

absence reporting procedure would result in the employer documenting an unexcused, no-call/no-show absence. The attendance policy also included the following provision:

For absences longer than one-day, employees are responsible to inform HR of their expected return date. If you are unable to return on that date, it is your responsibility to follow the call off procedure above. Failure to do so will result in a No Call/No Show.

From Fall 2017 until May 2018, Ms. Morin was intermittently off work due to the need to care for her mother. Ms. Morin requested, and the employer approved, intermittent leave under the Family and Medical Leave Act (FMLA) for this time away from work. Ms. Morin's need for time from work to care for her mother gave rise to interpersonal friction between Ms. Morin and her coworkers. Ms. Morin suffers from depression, anxiety, and obsessive compulsive disorder. Ms. Morin was first diagnosed with those health issues in 2011, prior to the ADM employment. At the time Ms. Morin last performed work for the employer on May 24, 2018, Ms. Morin had come to perceive the workplace as hostile, found it difficult to focus on her work, and frequently wept at work. It was in this context that Ms. Morin's psychiatrist, Dr. Jeffrey Wilharm, M.D., took Ms. Morin off work in the last week of May 2018.

In connection with going off work in May 2018, Ms. Morin contacted Patricia Cash, Payroll Specialist, to request continuous FMLA leave. Ms. Cash functions as the ADM Cedar Rapids plant's in-house leave benefits coordinator in conjunction with ADM's use of third-party FMLA and short-term disability administrators. ADM's third-party FMLA administrator is Aetna. ADM's third-party short-term disability administrator is Central States/TeamCare. At the time of this contact in May 2018, Ms. Cash directed Ms. Morin to contact Aetna regarding the request for *continuous* FMLA leave. Ms. Cash directed Ms. Morin to contact the Central States/TeamCare to request short-term disability benefits. Ms. Cash also directed Ms. Morin, pursuant to the employer's attendance policy, to update Ms. Cash regarding medical appointment dates and Ms. Morin's expected return-to-work date. Ms. Morin and/or Dr. Wilharm submitted appropriate materials to Aetna in support of Ms. Morin's need for continuous FMLA leave. Dr. Wilharm certified Ms. Morin's need to be on continuous leave for the period of May 30, 2018 through July 13, 2018. Because Ms. Morin had previously used part of her annual FMLA leave allotment, Aetna approved Ms. Morin for continuous FMLA leave only for the period of May 30, 2018 through June 20, 2018, at which time Ms. Morin would exhaust her FMLA leave eligibility. Ms. Morin and/or Dr. Wilharm submitted appropriate materials to Central States/TeamCare in support of Ms. Morin's need for short-term disability benefits. Central States/TeamCare approved Ms. Morin for short-term disability benefits through July 11, 2018. Ms. Morin at all relevant times had online access to Central States/TeamCare information concerning the status of her short-term disability claim. Based on the FMLA leave approval through June 20, the short-term disability benefits approval through July 11, 2018, and Ms. Morin's agreement to keep Ms. Cash updated regarding her medical appointments and return-to-work date, the employer deemed Ms. Morin to be on an approved leave of absence through July 11, 2018. On June 20, 2018, Ms. Morin telephoned Ms. Cash to remind Ms. Cash that she likely would not be returning to work until mid-July.

Ms. Morin did not return to work in mid-July. On July 12, 2018, Ms. Morin had a follow-up appointment with Dr. Wilharm. Dr. Wilharm determined that Ms. Morin needed to remain off work until August 9, 2018. Dr. Wilharm was supposed to fax materials to Central States/TeamCare in support of Ms. Morin's need to remain off work and extend short-term disability benefits until August 9, 2018. On July 12, 2018, Ms. Morin telephoned Ms. Cash to let her know that Dr. Wilharm had delayed her release date to August 9, 2018. Ms. Cash directed Ms. Morin to notify Ms. Cash if the return-to-work date changed. For an extended time, Ms. Morin did not hear from Central States/TeamCare regarding whether she was approved or denied short-term disability benefits for the period of July 12, 2018 through August 9, 2018. Central States/TeamCare subsequently asserted that it had not received the materials Dr. Wilharm was to have sent in connection with the July 12, 2018 medical appointment.

On August 6, 2018, Ms. Morin had a follow-up appointment with Dr. Wilharm. Dr. Wilharm determined that Ms. Morin needed to remain off work through September 7, 2018. Dr. Wilharm was at that point adjusting Ms. Morin's psychotropic medications in an effort to improve Ms. Morin's mental health to the point where she would be able to return to the employment. On August 9, a Central States/TeamCare representative notified Ms. Cash that Ms. Morin had not provided materials to Central States/TeamCare to support short-term disability benefits beyond July 11, 2018. On August 9, Ms. Morin telephoned Ms. Cash to update her regarding Dr. Wilharm's extension of her time away from work. Ms. Morin told Ms. Cash that her next appointment with Dr. Wilharm was set for August 16, 2018 and that Ms. Morin would update Ms. Cash following that appointment. Ms. Cash directed Ms. Morin to contact Central States/TeamCare to resolve the short-term disability issue. Ms. Morin did not contact the Central States/TeamCare. Instead she contacted Dr. Wilharm. On August 14, 2018, Dr. Wilharm sent medical progress notes for May 2018 through August 8, 2018 to Central States/TeamCare.

After Ms. Cash was contacted by Central States/TeamCare and by Ms. Morin on August 9, Ms. Cash contacted Leanne Wagner, Human Resources Manager for the Cedar Rapids ADM plant, to discuss Ms. Morin's leave status.

On August 13, 2018, Ms. Wagner sent a letter to Ms. Morin by certified mail. The letter stated as follows:

Per your recent phone call on August 9th, you indicated that your doctor is extending your medical leave until early September and [that you] would call on August 17th with an update. We recently learned Central States has not received medical information since July 12, 2018 from your physician in support of your disability claim. We see that your last disability payment was sent on July 22, 2018 and that payments will not continue until Central States receives updated medical information from your physician. You are currently not on a supported medical leave.

Please contact either Central States regarding medical support of your disability claim or me ... to discuss your claim status by August 16, 2018.

Ms. Morin did not receive Ms. Wagner's August 13, 2018 letter. Ms. Wagner directed the letter to an old address. Ms. Wagner had moved in 2016 and had updated her address information at the ADM online employee portal at the time of her move to ensure that she would receive pay stubs, tax forms, and benefit information at the new address. Ms. Morin was unaware that the ADM Cedar Rapids plant could not access the ADM online employee portal and was unaware that the ADM corporate office would not share the updated address information with the Cedar Rapids plant. ADM's corporate office did not share the updated address information with the Cedar Rapids ADM personnel. The Cedar Rapids personnel could not directly access the information Ms. Morin provided to the employer via the ADM online employee portal.

Ms. Morin did not call Ms. Cash to provide an update following her August 16, 2018 medical appointment. On August 17, 2018, Ms. Cash called Ms. Morin's telephone number and left a voicemail message for Ms. Morin. Ms. Cash stated that she was waiting for the update Ms. Morin had said she would provide. Ms. Morin did not respond to Ms. Cash's message. Ms. Cash notified Ms. Wagner that she had not received the anticipated update.

On August 23, 2018, Ms. Wagner sent a second letter to Ms. Morin. The employer directed the August 23, 2018 letter to Ms. Morin's old address. Ms. Morin did not receive the letter.

Ms. Wagner wrote:

As stated in the letter that was sent to you on August 13, 2018, we recently learned Central States has not received medical information since July 12, 2018 from your physician in support of your disability claim. Thus, you are currently not on a supported medical leave.

We did not receive a call by the deadline of August 16, 2018. Since we have not heard from you, we have tried calling you multiple times with no response. Please contact me ... to discuss your employment. If we do not hear from you, your employment may be terminated.

On August 24, 2018, Dr. Wilharm sent a leave extension request to Central States/TeamCare in support of Ms. Morin's request for short-term disability benefits through September 8, 2018.

As of August 28, 2018, Ms. Morin had still not contacted the employer to provide the update she had agreed to provide following her August 16, 2018 medical appointment. On or after August 24, 2018, Ms. Morin fell ill due to an issue with her gallbladder. On August 28, 2018, Ms. Morin underwent laparoscopic removal of her gallbladder. Following the procedure, Ms. Morin was discharged from the hospital to home on August 28. The surgeon advised Ms. Morin that her recovery from the procedure would take two weeks. Ms. Morin had an allergic reaction to the antiseptic wash applied to her abdomen prior to the surgical procedure and this allergic reaction prolonged her recovery from the procedure. Ms. Morin did not notify Central States/TeamCare or ADM of her gallbladder issue, the surgical procedure, or of her need to recover from the procedure.

On August 28, 2018, Ms. Wagner sent a third and final letter to Ms. Morin. The employer again directed the letter to Ms. Morin's old address. Ms. Morin did not receive the letter. Ms. Wagner wrote.

As stated in the letter that was sent to you on August 13, 2018, we recently learned Central States has not received medical information since July 12, 2018 from your physician in support of your disability claim. Thus, you are currently not on a supported medical leave.

We did not receive a call from you by the deadline of August 16, 2018. Since we have not heard from you, we have tried calling you multiple times with no response. Please contact me ... to discuss your employment. If we do not hear from you by Friday, August 31, 2018, we will assume that you have abandoned your employment at ADM.

When Ms. Wagner did not hear from Ms. Morin by the August 31, 2018 deadline she had set in her August 28 letter, she deemed Ms. Morin's employment terminated.

On September 7, 2018, Ms. Morin sent an email message to Ms. Cash. Ms. Morin wrote that she was sorry for getting back to Ms. Cash so late. Ms. Morin wrote that she had "a call into" her doctor regarding extension of her short-term disability. Ms. Morin wrote that she had just undergone emergency gallbladder surgery and therefore could not work for a while. Ms. Morin wrote that October 1, 2018 was the most realistic return-to-work date she could provide. Ms. Morin wrote that she could possibly return to work a week earlier than that depending on how fast she healed.

In response to the email message, Ms. Cash attempted to contact Ms. Morin by telephone that same day. When Ms. Morin did not answer, Ms. Cash left a voicemail message. Ms. Cash stated in her message that ADM had sent multiple letters to Ms. Morin, that the employment

was terminated effective August 31, 2018, that Ms. Morin's personal effects would be left at the guard shack for Ms. Morin to retrieve, and that Ms. Morin could call if she had questions.

Following Ms. Cash's voicemail message of August Ms. Morin waited until September 13, 2018 to contact Ms. Cash. At that time, Ms. Morin asked Ms. Cash where the employer had sent the letters. When Ms. Cash named the address to which the letters had been directed, Ms. Morin explained that she had not lived at that address since 2016 and that she had updated her address via the ADM online employee portal. Ms. Cash told Ms. Morin that the ADM plant in Cedar Rapids had not received notice of the new address and therefore had used the address it had on file. Ms. Cash referenced the voicemail message she had left for Ms. Morin on August 17 without receiving a response from Ms. Morin and referenced the update that Ms. Morin was supposed to have provided at that time. Ms. Morin asked who she could speak to further about the matter, but Ms. Cash stated the decision was final. Ms. Morin told Ms. Cash that Central States/TeamCare kept asking for more information, that Central States/TeamCare had deemed materials sent by Dr. Wilhelm to be insufficient, but that she believed Central States/TeamCare had ultimately approved her request to extend short-term disability benefits. Ms. Cash told Ms. Morin that ADM had notified Central States/TeamCare that the employment was terminated. Ms. Cash reminded Ms. Morin that she was supposed to maintain contact with the employer.

After Ms. Morin spoke with Ms. Cash on September 13, Ms. Morin contacted Dr. Wilharm. On that day, Dr. Wilharm sent a letter and progress notes to Central States/TeamCare in support of extending her short-term disability benefits. On October 10, 2018, Ms. Morin received notice from Central States/TeamCare that her request for the short-term disability benefits was approved through August 31, 2018.

Ms. Morin established an original claim for unemployment insurance benefits that was effective September 23, 2018. Ms. Morin did not immediately commence making weekly claims. Ms. Morin reactivated her claim during the week that started October 7, 2018. Ms. Morin received \$2,584.00 in benefits for the period of October 7, 2018 through November 17, 2018. ADM is the sole base period employer in connection with the claim. On October 15, 2018, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Morin's separation from the employment. Leanne Wagner represented the employer at the fact-finding interview.

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 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.

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence in the record establishes an August 31, 2018 discharge for misconduct in connection with the employment based on excessive unexcused absences and insubordination. Ms. Morin commenced an approved medical leave of absence at the end of May 2018. Ms. Morin understood as of May 2018 that the employer's approval for the initial leave period, and approval of any extension of the leave period, was conditioned upon Ms. Morin maintaining appropriate contact with Ms. Cash regarding scheduled medical appointments and regarding her return to work date. Ms. Morin also understood that the leave approval was conditioned upon Ms. Morin supplying appropriate medical documentation to the third party administrator to support her continued need to be absent from work. These requirements were consistent with the employer's written attendance policy. In May 2018, on June 20, on July 12, and on August 9, Ms. Morin demonstrated that she fully understood her obligation to provide appropriate updates to Ms. Cash in connection with her medical appointments and concerning her anticipated return-to-work date.

On August 9, Ms. Morin understood that she was required to update Ms. Cash following her August 16 medical appointment. On August 9, Ms. Morin also understood that the employer was concerned about Central States/TeamCare's assertion that it had not received appropriate documentation to support a need for leave beyond July 11, 2018. Ms. Cash reasonably directed Ms. Morin to contact Central States/TeamCare. Ms. Morin elected not to contact Central States/TeamCare and elected instead to have her doctor make that contact. While it was reasonable for Ms. Morin to enlist the assistance of her doctor, it was unreasonable for Ms. Morin not to make personal contact with Central States/TeamCare. Ms. Morin unreasonably elected not to update Ms. Cash following the August 16 medical appointment. Ms. Morin had at that point been away from work for almost three months and the employer was reasonably concerned about the length of the absence. Ms. Morin unreasonably elected to disregard the voicemail message Ms. Cash left for her on August 17 regarding the required update following the medical appointment. Ms. Morin then elected to continue out of contact with the employer for three weeks until September 7, 2018. Ms. Morin's August 28 gallbladder removal did not prevent her from making appropriate contact with the employer prior to August 28. Ms. Morin's gallbladder removal and recovery did not prevent her from providing the employer with the required update earlier than September 7. Ms. Morin unreasonably failed to give notice to the employer of her need to undergo surgery and unreasonably delayed providing notice to the employer of her need to be absent to recover from the procedure. After Ms. Morin failed over a two-week period to provide the required update, the employer deemed the employment terminated as of August 31, 2018. Based on Ms. Morin's failure to provide the required update following the August 16 appointment, each of the several absences between August 17 and August 21 was an unexcused absence under the applicable law. Those unexcused absences were excessive. Ms. Morin's unreasonable election not to provide the update regarding the August 16 appointment, unreasonable election not to respond to Ms. Cash's August 17 voice mail message, and her ongoing failure for two weeks thereafter to make appropriate contact with the employer constituted insubordination.

Because the evidence established a discharge for misconduct in connection with the employment, Ms. Morin is disqualified for benefits until she has worked in and been paid wages

for insured work equal to ten times her weekly benefit amount. Ms. Morin must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Morin received \$2,584.00 in benefits for the period of October 7, 2018 through November 17, 2018, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Morin received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Morin is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The October 22, 2018, reference 01, decision is reversed. The claimant was discharged on August 31, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,584.00 in benefits for the period of October 7, 2018 through November 17, 2018. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs