

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY J RADLEY
Claimant

APPEAL NO. 09A-UI-16372-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACKSON RECOVERY CENTERS INC
Employer

OC: 09/27/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 20, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 7, 2009. Claimant Tiffany Radley participated. Heather Cichon of Xchanging represented the employer and presented testimony through Traci Merchant, Program Director for Adult Services.

ISSUES:

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

Whether the discharge was based on a current act of misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tiffany Radley was employed by Jackson Recovery Centers on a full-time basis from 2005 until September 29, 2009, when Traci Merchant, Program Director for Adult Services, and Priscilla Anderson, Adult Services Coordinator, discharged her from the employment. Ms. Radley had started the employment as an addiction counselor, but accepted a demotion to addiction technician in 2007. Ms. Anderson was Ms. Radley's immediate supervisor.

The final incident that prompted the discharge occurred on September 28, 2009. On that day, a police officer appeared at the workplace for the purpose of escorting Ms. Radley to an appearance before a judge. In December 2007, Ms. Radley was arrested and charged with operating while intoxicated. At Ms. Radley's Initial Appearance, the judge had directed Ms. Radley to obtain a substance abuse evaluation. Ms. Radley immediately complied and had the evaluation performed by her employer, Jackson Recovery Centers. The evaluator did not recommend any treatment. In October 2008, Ms. Radley completed a written guilty plea with her attorney. In November 2008, Ms. Radley appeared before the judge for sentencing and was granted a deferred judgment. The court file lacked a copy of the substance abuse evaluation report, though Ms. Radley had provided the same to her attorney for the purpose of submitting the report to the court. When Ms. Radley appeared before the judge on September 28, 2009,

the judge remarked that the court file concerning Ms. Radley's case was "a mess." Ms. Radley explained she had complied with the earlier order to obtain a substance abuse evaluation and agreed to provide the same. Ms. Radley was released from custody at that time.

After Ms. Radley was released from custody on September 28, she returned to the workplace, but everyone except a therapist was gone for day. Ms. Radley contacted Ms. Merchant and explained what had occurred. Ms. Merchant told Ms. Radley she had arranged for other employees to cover Ms. Radley's shifts for the remainder of the week. On Wednesday, September 30, Ms. Radley appeared for a meeting with Ms. Merchant. At that time, Ms. Merchant told Ms. Radley she was discharging her because of the September 28 arrest. The employer was concerned that Ms. Radley's personal/legal problems were interfering with her work. The employer also deemed the early departure from work on September 28 an unexcused absence. The next most recent attendance matter had been in January 2009, eight months earlier.

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).

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 administrative law judge must consider first whether Ms. Radley was discharged for excessive unexcused absences. The administrative law judge concludes the final absence on September 28, 2009 was an excused absence under the applicable law because it involved no deliberate, intentional, or culpable acts by Ms. Radley. Ms. Radley had no reason to expect a police officer would be coming to the workplace to take her before a judge and complied with the court's earlier order. Even if the administrative law judge were to deem the early departure on September 28 and unexcused absence, the evidence indicates the next most recent absence was nine months earlier. Thus, the evidence would still not establish excessive unexcused absences.

The administrative law judge will next address the employer's argument that the arrest constituted misconduct because Ms. Radley's personal/legal problems intruded into the workplace. Again, the evidence would not indicate misconduct in connection with the employment because the intrusion was not based on deliberate, intentional, or culpable acts by Ms. Radley. Though the OWI offense itself would constitute a deliberate, intentional, or culpable act, Ms. Radley had acted in good faith to resolve that matter many months prior to the September 28 incident. Ms. Radley had no control over the error in the court file and had no reason to expect a police officer would come to collect her from the workplace during her shift. As unpleasant as the event might have been for Ms. Radley and others in the workplace, it did not constitute misconduct in connection with the employment.

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

DECISION:

The Agency representative's October 20, 2009, reference 01, decision is affirmed. 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/css