IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDAL J KOPPES
Claimant

IAC IOWA CITY LLC
Employer

APPEAL NO. 12A-UI-08511-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/10/12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 6, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 8, 2012. Claimant participated. Teresa Feldman, assistant human resources manager, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randal Koppes was employed by IAC Iowa, L.L.C., as a full-time apprentice molder from 2010 and last performed work for the employer on June 12, 2012. Mr. Koppes' work hours were 11:00 p.m. to 7:30 a.m., Sunday night through Friday morning. Mr. Koppes' immediate supervisor was Shift Supervisor Bob Tanner. On the morning of June 12, 2012, Mr. Koppes clocked out at 7:36 a.m. and went home. Mr. Tanner had expected that Mr. Koppes would stay until 11:30 a.m. that day to provide coverage while other employees participated in training. Mr. Tanner had not clearly communicated this to Mr. Koppes. When Mr. Koppes appeared for his shift on the evening of June 12, 2012, Mr. Tanner would not allow him to work and told him to contact human resources in the morning. Mr. Koppes followed that directive. The employer asserted that Mr. Koppes had voluntarily quit the employment by not staying to perform overtime hours. The employer ended the employment. Mr. Koppes' employment was governed by a collective bargaining agreement. The collective bargaining agreement contained the following provision:

> NOTIFICATION WHEN LEAVING WORK
>
> Any employee who leaves the plant for any reason (other than lunch or the end of their scheduled shift) without obtaining permission from their immediate Supervisor (or another Supervisor) will be considered as walking off the job, and therefore, a Voluntary Quit. Telling another employee will not serve as proper notice of leaving the Plant.

The employer's assertion that Mr. Koppes had quit was based on the above provision. At the time Mr. Koppes left work at 7:36 a.m. on the morning of June 12, 2012, he followed his usual routine for ending his shift. Mr. Koppes did not say or do anything to suggest that he intended to quit the employment. Mr. Koppes did not say or do anything to indicate that he knew he was expected to stay until 11:30 a.m. Mr. Koppes had no prior attendance matters.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence does not support the employer's assertion that Mr. Koppes voluntarily quit the employment. Mr. Koppes' conduct indicates an intention to continue in the employment. It was the employer, not Mr. Koppes, who terminated the employment. The evidence establishes a discharge, not a voluntary quit.

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). 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 employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that Mr. Koppes knew on the morning of June 12, 2012 that he was supposed to stay late. The employer had the ability to present testimony through Mr. Tanner, but did not present such evidence. The employer has the ability to present documentary evidence establishing notice to Mr. Koppes that he was expected to stay late that day, but the employer did not present such evidence. The evidence indicates that Mr. Koppes left at the end of his scheduled shift. The evidence fails to establish any misconduct on the part of Mr. Koppes. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Koppes was discharged for no disqualifying reason.

Accordingly, Mr. Koppes is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Koppes.

DECISION:

The Agency representative's July 6, 2012, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw