

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONTAVIS Q MOORE
Claimant

APPEAL NO. 11A-UI-09986-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

**OC: 06/26/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 21, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 22, 2011. Claimant Montavis Moore did respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Ellen Heuer, human resources representative, represented the employer. Exhibits 1 through 10 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: Montavis Moore was employed by Ryder Integrated Logistics, Inc., as a full-time materials handler from 2008 until June 30, 2011, when Bryan Mueller, customer logistics manager, discharged him from the employment. Mr. Mueller was Mr. Moore's immediate supervisor.

The final incident that triggered the discharge occurred on June 22, 2011. On that day, according to the employer's time clock system, Mr. Moore clocked back in 31 minutes after he clocked out for his 30-minute lunch break. The employer does not know whether others were returning from lunch at the same time or whether Mr. Moore had to wait to clock back in. Even though the time clock information would have been immediately available to the employer, Mr. Mueller did not review that information until Monday, June 27.

In making the decision to discharge Mr. Moore from the employment, Mr. Mueller considered a 35-minute lunch break Mr. Moore had taken on June 20.

In making the decision to discharge Mr. Moore from the employment, Mr. Mueller considered attendance matters from 2010. On August 26, Mr. Moore clocked out five minutes before the scheduled end of his shift. On August 27, Mr. Moore clocked out one minute before the

scheduled end of his shift. On October 21, Mr. Moore was absent without notifying the employer.

The employer had a written attendance policy that required that Mr. Moore clock in and be ready to work at his scheduled start time. The policy allowed Mr. Moore to clock in up to seven minutes early. The employer's policy also required that Mr. Moore not clock out until his scheduled quit time. The policy allowed Mr. Moore to clock out up to seven minutes after the scheduled end of his shift. Mr. Moore had received a copy of the attendance policy.

The employer issued multiple written reprimands to Mr. Moore regarding attendance.

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).

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).

The employer failed to present any testimony from persons with personal knowledge of the incident that triggered the discharge or any of the prior incidents that factored into the discharge. The employer had the ability to present testimony through Mr. Mueller or others and elected not to present such testimony. There is insufficient evidence, and insufficient direct and satisfactory evidence, to establish misconduct in connection with the final incident on June 22. The evidence indicates that the employer's timekeeping system documented a 31-minute lunch break. The minute difference that the employer's time keeping system documented might easily be accounted for by the rolling of the clock to the next minute as Mr. Moore clocked back in or by minor delay attributable to Mr. Moore having to wait behind others to clock in. Because the employer witness lacked personal knowledge of the incident, the employer witness was unable to address these matters. The evidence fails to establish any absence or tardiness on June 22 in connection with Mr. Moore's return from his lunch break.

In addition, the evidence fails to establish a reasonable basis for the employer's delay from the June 22 incident to June 30 before the employer addressed the matter with Mr. Moore. The evidence fails to establish a current act of misconduct. Because the evidence fails to establish a current act, the administrative law judge need not consider the prior incidents.

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

DECISION:

The Agency representative's July 21, 2011, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw