

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DAVID G SPIEGELHALTER**  
Claimant

**APPEAL NO. 20A-UI-02871-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FALEY ENTERPRISES INC**  
Employer

**OC: 12/29/19**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 26, 2020, reference 02, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 11, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 5, 2020. Claimant David Spiegelhalter participated. Curran Smothers 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, A, B and C into evidence. The parties waived formal notice on the issue of whether the claimant had been overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits.

**ISSUES:**

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

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: David Spiegelhalter was employed by Faley Enterprises, Inc., doing business as IWI Wholesale Distributing, as a full-time outside salesperson from February 3, 2020 until March 11, 2020, when the business owner, T.J. Faley discharged him from the employment due to the employer's dissatisfaction with the Mr. Spiegelhalter's work effort. The work involved selling and delivering auto parties to business customers, calling upon the customer at their business, receiving and processing returns, and performing associated paperwork. About 85 percent of the work was to be performed out on the sales route. Mr. Spiegelhalter applied for the salary-plus-commission route sales job in response to a job listing the employer posted on [www.indeed.com](http://www.indeed.com). The job posting indicated the typical work day would start at 8:00 a.m. and would end at 5:00 p.m. and that the work days would be Monday through Friday. At the interview, the employer told Mr. Spiegelhalter that he would be expected to work 45 to 50 hours per week and that some drivers reported for work as early as 5:00 a.m. and others stayed later

in the day to meet the work hour requirement. The employer also told Mr. Spiegelhalter that he would be expected to work every fourth Saturday. At the interview, Mr. Spiegelhalter told the employer that he was a single-parent to three minor children and that he split physical custody with his ex-wife. Mr. Spiegelhalter told the employer that his children's before-school programs started at 7:00 a.m. and that his children's after-school programs ended at 5:00 p.m. Mr. Spiegelhalter's children are 11, 6 and 5 years old. Mr. Spiegelhalter told the employer that he was available for work during those times when his children were in their school-related programs. During the first two weeks of the employment, Mr. Spiegelhalter trained with another driver and the employer structured his work time.

The employer assigned Mr. Spiegelhalter a sales territory that stretched west from Dubuque to Manchester and south to the Bellevue area. The route included 430 customers.

On the morning of March 11, 2020, Mr. Spiegelhalter arrived for work at 7:22 a.m. The business owner, T.J. Faley, met Mr. Spiegelhalter at his assigned work van. Mr. Faley asked whether Curran Smothers, Controller, had spoken to Mr. Spiegelhalter about getting more work hours out of Mr. Spiegelhalter. Mr. Faley noted that it was almost 7:30 a.m. and that Mr. Spiegelhalter was just showing up. Mr. Spiegelhalter told Mr. Faley that he had arrived at work as early as possible after dropping off his children. Mr. Faley inaccurately asserted that Ms. Spiegelhalter had said at the interview that he would only need to pick up his children "once in a while." Mr. Faley asked when Mr. Spiegelhalter would be seeing his first customer. Mr. Spiegelhalter told Mr. Faley that his first customer was just down the road and that he would be seeing the customer before 8:00 a.m. Mr. Faley told Mr. Spiegelhalter, "We need an exit strategy." Mr. Faley told Mr. Spiegelhalter, "Go home. I'm done with you." Upon Mr. Faley's directive, Mr. Spiegelhalter left the workplace at 7:32 a.m. The employer's decision to discharge Mr. Spiegelhalter followed Mr. Spiegelhalter's absence on March 10 absence to take his sick child to the doctor and to otherwise care for the child, who was ill with the flu.

On Saturday, March 7, Mr. Smothers spoke with Mr. Spiegelhalter regarding three concerns the employer had with Mr. Spiegelhalter's employment. One of those concerns was Mr. Smothers' perception that Mr. Spiegelhalter would return to the employer's warehouse by 2:00 p.m. and leave at 3:00 p.m. The employer did not track Mr. Spiegelhalter's work hours or require Mr. Spiegelhalter to do so. When Mr. Spiegelhalter did not have his children in his care, Mr. Spiegelhalter would arrive for work as early as 6:00 a.m. On days when he had his children in his care, he would report for work prior to 8:00 a.m. Mr. Spiegelhalter would usually leave on his route before Mr. Smothers was in the workplace. Though Mr. Spiegelhalter might arrive back at the shop between 2:00 and 3:00 p.m., he would then spend the necessary time to complete associated paperwork, prior to leaving for the day. When Mr. Spiegelhalter had his children in his care, he would leave work in time to collect his children from their after-school programs at 5:00 p.m. During the March 7 meeting, Mr. Smothers also expressed concern with Mr. Spiegelhalter's response, of lack of the same, to emails sent by the manager, the employer's office staff, and Mr. Faley. Mr. Spiegelhalter would respond as soon as he was able, but did not prioritize responding to the emails in the absence of an indication in the subject line that an immediate response was required. During the March 7 meeting, Mr. Smothers discussed with Mr. Spiegelhalter an expectation that Mr. Spiegelhalter engage in self-training that included watching a customer's sales video. During the meeting, Mr. Spiegelhalter expressed that he was new in the employment and was still adjusting to the work culture. The employer was subsequently disappointed that Mr. Spiegelhalter did not review a particular client's marketing/sales video in the days between March 7 and 11.

## 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).

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 ended Mr. Spiegelhalter's employment toward the beginning of Mr. Spiegelhalter's fourth week of post-training work. Though the employer misrepresented the work hours in the indeed.com posting, the employer spelled out the expectations during the interview process. During the interview process, Mr. Spiegelhalter was forthright about the reasonable parameters his parental responsibilities placed on his availability for work. The weight of the evidence indicates that Mr. Spiegelhalter performed his work duties in good faith and to the best of his ability. The employer presented insufficient evidence to prove that Mr. Spiegelhalter was not giving the employer 45 hours per week. The employer's decision to discharge Mr. Spiegelhalter appears to have been in response to Mr. Spiegelhalter's need to be absent on March 10 to care for his sick child, something he had a moral and legal obligation to do. The evidence does not establish any absences that would be unexcused under the applicable law. Mr. Spiegelhalter's inability to perform to the employer's satisfaction was not misconduct. The evidence does not establish a discharge based on misconduct in connection with the employment. Accordingly, Mr. Spiegelhalter is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The March 26, 2020, reference 02, decision is affirmed. The claimant was discharged on March 11, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

May 6, 2020  
Decision Dated and Mailed

jet/scn