

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEREMY ANDERSON
Claimant

WALMART INC
Employer

APPEAL NO. 19A-UI-08710-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jeremy Anderson filed a timely appeal from the November 1, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Anderson was discharged on October 14, 2019 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on December 2, 2019. Mr. Anderson participated. Peggy Leight of Equifax represented the employer and presented testimony through John Hoyt.

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: Jeremy Anderson was employed by Walmart, Inc. as a part-time Maintenance Associate from 2015 until October 13, 2019, when John Hoyt, Front End Coach, discharged him from the employment for attendance. The final absence that triggered the discharge occurred on October 8, 2019, when the employer alleges Mr. Anderson reported to work late. Mr. Hoyt does not know what time Mr. Anderson was scheduled to work that day, does not know how late Mr. Anderson allegedly was, does not know the reason for the late arrival, and does not know whether or when Mr. Anderson provided notice of the late arrival. Mr. Anderson believes he was scheduled to work at 1:00 p.m., may have been five to 10 minutes, late, does not recall the reason for the late arrival, and believes he did in fact provide timely notice that he would be late. The employer considered a purported October 4, 2019 no-call/no-show absence, but does not know what hours Mr. Anderson was scheduled to work on October 4, 2019. Mr. Anderson believes he may have been scheduled to work that day, does not know what hours he was scheduled to work, does not recall the basis for the absence, but believes he provided timely notice to the employer. The employer considered additional alleged late arrivals on September 15 and 29, 2019, but does not know what time Mr. Anderson was scheduled to work, what time Mr. Anderson arrived, why Mr. Anderson was allegedly late, or whether or when Mr. Anderson provided notice of the late arrival. Mr. Anderson believes he was scheduled to work at 11:00 a.m. on September 15, was late due to the need to undergo treatment for multiple sclerosis, and that he provided timely notice to the employer. Mr. Anderson cannot recall

whether he was scheduled to work on September 29 or anything else regarding the purported absence. The employer considered an alleged early departure on September 16, 2019, but does not know what time Mr. Anderson was scheduled to start or end work, what time he left, why he left, or whether he provided notice to the employer of the early departure. Mr. Anderson believes he was scheduled to work until 9:00 p.m. on September 16, that he left early due to issues related to his multiple sclerosis, that he spoke with a member of management prior to leaving, and the manager approved the early departure. The employer did not issue any reprimands to Mr. Anderson prior to discharging him from the employment. At some point during the employment, the employer directed Mr. Anderson to monitor his attendance "occurrence" points. The employer provided Mr. Anderson with online access so that he could monitor his attendance "occurrence" points. Mr. Anderson could also monitor his attendance "occurrence" points via the time clock.

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 findings of fact reflect the employer's failure to present sufficient evidence to prove *any* unexcused absences by a preponderance of the evidence. Accordingly, Mr. Anderson is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The November 1, 2019, reference 01, decision is reversed. The claimant was discharged on October 14, 2019 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/scn