

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LUKAS ANDERSON
Claimant

SAFELITE SOLUTIONS LLC
Employer

APPEAL NO. 22A-UI-02110-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/05/21
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Admin. Code Rule 871 24.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 21, 2021, reference 01, decision that allowed benefits to the claimant, provided the claimant 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 December 6, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on February 15, 2022. Claimant, Lukas Anderson, did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Justine Lange, Contact Center Manager, represented the employer. The administrative law judge took official notice of the following Agency administrative records: DBRO and KFFV. The fact-finding interview materials were not available to the administrative law judge at the time of the appeal hearing.

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.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Lukas Anderson, was employed by Safelite Solutions, L.L.C. as a full-time Customer Service Representative from September 2020 until December 6, 2021, when the employer discharged him for attendance. The claimant's usual work hours were 8:30 a.m. to 5:00 p.m. The claimant worked from his home. If the claimant needed to be absent from work, the employer's absence reporting policy required that the claimant call the automated absence reporting number prior to the scheduled start of the shift and respond to the automated prompts with his name, employee ID number, and whether the absences was "general absence personal, personal leave, or FMLA." The employer reviewed the attendance policy with the claimant at the start of the employment and also in connection with issuing reprimands for attendance.

The final absence that triggered the discharge occurred on Friday, November 19, 2021, when the claimant was absent from his entire shift. The claimant provided proper notice of the absence by calling the automated absence reporting number prior to the start of the shift. The claimant selected "absence personal" as the nature of the absence. The claimant returned to work on Monday, November 22, 2021 and continued to report for work until December 6, 2021, when the employer discharged him from the employment. The employer waited until December 6, 2021 to speak with the claimant regarding the November 19, 2021 absence. Between those two dates, Annette Kohl, Contact Center Director, and Justine Lange, Contact Center Manager, reviewed the claimant's attendance history and submitted a recommendation for discharge to the Vice President for that person's approval.

The employer considered absences within a year prior to the discharge when making the decision to end the employment. The next most recent absence occurred on November 2, 2021, when the claimant was absent from his entire shift with proper notice. The claimant later asserted that he had been absent because he lacked a working headset. However, Ms. Lange had provided the claimant with a headset a week earlier.

The next most recent absences were in September 2021. On September 13, 2021, the claimant left work early after speaking with a "job coach"/supervisor. The employer does not know why the claimant left work early. On September 14, 2021 the claimant was absent from his shift with proper notice. The employer does not know the reason for the absence. On September 15, 2021, the claimant left work early after speaking with a "job coach"/supervisor. The employer does not know why the claimant left work early.

The next most recent absences were in August 2021. On August 3, 2021, the claimant left work early after speaking with a "job coach"/supervisor. The employer does not know why the claimant left work early. On August 10, 2021, the claimant was absent from his shift with proper notice to the employer. The employer does not know the reason for the absence.

The next most recent absences were in July 2021. On July 21 and July 29, 2021, the claimant was more than two hours late for his shift without notifying the employer he would be late. On July 23, 2021, the claimant gave proper notice that he would be absent July 23 and July 24, 2021. The claimant indicated the absences were "personal absences."

Prior to discharging the claimant from the employment, the employer issued multiple reprimands to the claimant for attendance. The employer issued "final" warnings for attendance on July 28, August 11, September 16, and November 3, 2021. The employer issued a verbal warning on April 21, 2021 and a non-final written warning on July 6, 2021.

The employer considered additional, earlier absences when making the decision to discharge the claimant from the employment.

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 not disqualifying reason. The discharge was not based on a "current act." The absence that triggered the discharge occurred on November 19, 2021. The employer had notice of the absence that same day. The employer waited more than two weeks to address the absence with the claimant. The delay between the employer's notice of the conduct and the discussion with the claimant was unreasonable. Because the evidence fails to establish a current act, the administrative law judge need not further consider the absences and whether they were excused or unexcused under the applicable law. Because the evidence fails to establish a current act, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 21, 2021, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge was not based on a current act. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

March 9, 2022
Decision Dated and Mailed

jet/mh