

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUSTIN B WALKER
Claimant

SMITHFIELD PACKAGED MEATS CORP
Employer

APPEAL NO. 24A-UI-06264-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/09/24
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On July 8, 2024, the employer filed a timely appeal from the June 27, 2024 (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 May 30, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on July 24, 2024. Austin Walker (claimant) 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. Olivia Logue represented the employer and presented additional testimony through Deb Mauricio. Exhibits 1 through 10 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or willful misrepresentation of material facts in connection with the fact-finding interview.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Austin Walker (claimant) was employed by Smithfield Packaged Meats Corporation as a full-time maintenance technician from 2021 until May 30, 2024, when the employer discharged him from the employment for attendance. Mr. Walker's shift started at 5:00 a.m. and ended sometime between 2:00 p.m. and 3:00 p.m. Mr. Walker's usual workdays were Monday through Friday, with weekend work required as needed.

The employer's attendance policy, updated February 12, 2024, required Ms. Walker to call the designated absence reporting line at least 30 minutes prior to his shift if he needed to be absent

from work. Prior to February 12, 2024, the employer's attendance policy required a call prior to the start of the shift.

The final absence that triggered the discharge occurred on May 20, 2024, when Mr. Walker was absent from his shift. Mr. Walker properly reported the absence to the employer by calling the absence reporting line more than 30 minutes prior to the start of the shift. Mr. Walker reported that he needed to be absent due an emergency. The employer does not have reason to disbelieve Mr. Walker's assertion of an emergency as the basis for the absence. The employer was aware that Mr. Walker's significant other was experiencing a high-risk pregnancy.

Mr. Walker returned to the workplace on May 21, 2024. No one from human resources addressed the May 20, 2024 absence with Mr. Walker at the time he returned to work. The employer witnesses do not know whether Mr. Walker had a further discussion with his supervisor regarding the nature of the emergency on May 20, 2024.

The employer also considered absences during the 12-months that preceded the May 20, 2024 absence when making the decision to discharge him from the employment. Under the employer's policy an employee who accrued nine attendance points was subject to discharge from the employment.

Prior to the absence on May 20, 2024, the next most recent absence was on May 5, 2024, when Mr. Walker provided late notice that he needed to be absent due to a family member's illness.

Mr. Walker had received prior reprimands for attendance and was subject to a last-chance agreement between April 24, 2024 and the May 30, 2024 discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(9) Excessive unexcused tardiness or absenteeism.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text 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 Iowa Admin. Code r.871 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. 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 87124.32(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 May 30, 2024 discharge for no disqualifying reason. The evidence in the record fails to establish an unexcused absence in connection with the May 20, 2024 final absence that triggered the discharge. That absence was properly reported to the employer and was based on an emergency during the period of the claimant's partner's high-risk pregnancy. The absence was an excused absence under the applicable law and, therefore, cannot serve as a basis for disqualifying the claimant for unemployment insurance benefits. Because the final absence was an excused absence under the applicable law, and because the next most recent absence was 25 days prior to the discharge, the evidence fails to establish a discharge based on a “current act” of misconduct. Because the evidence fails to establish a current act of misconduct, the administrative law judge need not consider the earlier absences and whether they were excused or unexcused absences under the applicable law.

The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 27, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on May 30, 2024 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".

James E. Timberland
Administrative Law Judge

August 1, 2024
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.