

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANITA J BAKER
Claimant

APPEAL NO. 12A-UI-08750-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

OC: 06/17/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

Juanita Baker filed a timely appeal from a representative's decision dated July 19, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 15, 2012. The claimant participated. Participating on behalf of the claimant was Mr. Gerald Goddard, attorney at law. The employer participated by Ms. Carrie Hale, human resource department employee.

ISSUE:

At issue is whether the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Juanita Baker was employed by the Winegard Company from November 7, 2011, until June 13, 2012, when she was discharged for exceeding the company's attendance infraction policy. Ms. Baker worked as a full-time assembler, working 2:30 p.m. until 10:30 p.m., Monday through Friday, plus overtime. The claimant was paid by the hour.

On June 11, 2012, Ms. Baker contacted the Winegard Company's human resource department to request a personal leave of absence because she was losing the child care arrangements that she had previously had in place. At that time, the company's human resource department reviewed Ms. Baker's attendance and determined that the claimant had exceeded the permissible number of attendance infractions on May 19, 2012. Under established company policy, employees are subject to discharge if they accumulate five unexcused absences in a 12-month rolling period. Absences are considered to be excused if the employee provides documentation supporting their need to be absent on a particular date. Ms. Baker had been absent on May 9, May 18, and May 19, 2012. The claimant had previously been absent on February 7, and April 30, 2012.

Although it is the usual company practice to issue warnings to employees at the beginning of each month when the employer determines that they are near exceeding the permissible number of attendance infractions, Ms. Baker was not issued any warnings prior to her discharge, as three absences had occurred in May and the employer's human resource department had not yet had the opportunity to review employment records and to issue any warnings to the claimant.

During the telephone call on June 11, 2012, Ms. Hale offered the claimant an opportunity to provide documentation regarding any of her absences in May. Ms. Baker believed that she had provided adequate documentation by providing a chiropractor's statement for her absences on May 18, and May 19, 2012, and therefore did not offer to supply any additional documentation. The claimant also did not mention that she had previously provided that documentation to her supervisor. When Ms. Hale called back on June 13, 2012, to determine whether the claimant was going to receive a personal leave of absence as she had previously requested, the claimant was informed that she was being discharged from employment for her attendance violations that had taken place in May 2012.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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 App. 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In the case at hand, it is the claimant's position that she had previously provided documentation from her chiropractor of her need to be absent on May 18, and May 19, 2012, and that the claimant did not believe that her employment was in jeopardy, because she believed that she was within the number of infractions allowed by company policy and had not been warned by the employer. The claimant was discharged after she requested a personal leave of absence on June 11, 2012, because she had lost her child care provider. At that time, a review of the claimant's previous employment history showed attendance infractions that had taken place some weeks before, and the claimant was then discharged on June 13 based upon the employer's belief that she had not provided previous, adequate documentation.

The administrative law judge concludes, based upon the evidence in the record, that the claimant was not discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. The Winegard Company was aware on May 19, 2012, that the claimant had apparently exceeded the permissible number of attendance infractions. However, the claimant was allowed to continue to work and provide services to the company through Friday, June 8, and was discharged after she requested a personal leave of absence. Based upon the time the elapsed between the claimant's last attendance infraction that was counted against her by the company and the time of the claimant's discharge from employment, the administrative law judge concludes the claimant was not discharged for a current act of misconduct. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 19, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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