

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILKERSON, WILLIAM, G
Claimant

APPEAL NO. 11A-UI-05533-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCKWELL COLLINS INC
Employer

**OC: 03/27/11
Claimant: Appellant (2-R)**

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

STATEMENT OF THE CASE:

William Wilkerson filed a timely appeal from the April 18, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 18, 2011. Mr. Wilkerson participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

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: William Wilkerson was employed by Rockwell Collins, Inc., as a full-time senior assembly operator from 2000 until March 21, 2011, when Mike Miller, Human Resources Director, discharged him for tardiness. On March 21, 2011, Mr. Wilkerson was late to work for personal reasons. Mr. Wilkerson had also been late to work under similar circumstances about two weeks earlier. Mr. Wilkerson has a diagnosis of severe depression and anxiety. Mr. Wilkerson had been on multiple medical leaves under the Family and Medical Leave Act since December 2009. Mr. Wilkerson had most recently been out on a FMLA medical leave from November 2010 until January 6, 2011. In January 2011, Mr. Wilkerson's immediate supervisor, Greg Widner, Production Analyst, issued a reprimand to Mr. Wilkerson for attendance. In connection with that reprimand, the employer began requiring that Mr. Wilkerson take a special form to his doctor to have his doctor complete the form after Mr. Wilkerson was absent from work, even if Mr. Wilkerson had already produced a doctor's note to cover the absence.

REASONING AND CONCLUSIONS OF LAW:

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.

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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 871 IAC 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 871 IAC 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).

The employer failed to respond to the hearing notice or participate in the hearing. The employer thereby failed to present any evidence to support the allegation that Mr. Wilkerson was discharged for misconduct in connection with the employment. The weight of the evidence in the record establishes an unexcused tardiness on March 21, 2011 and an additional unexcused tardiness two weeks earlier. The evidence in the record fails to establish any additional unexcused absences. These two absences were not sufficient to constitute excessive unexcused absences.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wilkerson was discharged for no disqualifying reason. Accordingly, Mr. Wilkerson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Wilkerson.

While the appeal letter and evidence raise the additional question of whether Mr. Wilkerson has been able to perform work and available for work since he established his claim for unemployment insurance benefits, the administrative law judge concludes that the lack of medical documentation concerning Mr. Wilkerson's health condition prevents the administrative law judge from having sufficient evidence upon which to base a decision regarding Mr. Wilkerson's ability to work or his availability for work. Accordingly, this matter will be remanded to the Claims Division for determination of whether Mr. Wilkerson has been able to work and available for work since he filed his claim for benefits.

DECISION:

The Agency representative's April 18, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since he filed his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css