

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOLTEN L STOCKDALE
Claimant

APPEAL NO. 17A-UI-03046-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 02/19/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Kolten Stockdale filed a timely appeal from the March 10, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Stockdale was discharged on February 21, 2017 for repeated tardiness. After due notice was issued, a hearing was held on April 12, 2017. Mr. Stockdale participated. Susan Gardner, Human Resources Supervisor, represented the employer. Exhibits 1 through 8 and A were received into evidence.

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: Kolten Stockdale was employed by Winnebago Industries as a full-time Production Assembler and Fabricator from 2015 until February 21, 2017, when the employer discharged him for repeated tardiness. Mr. Stockdale's scheduled start time was 6:00 a.m. Under the employer's work rules, Mr. Stockdale was required to be clocked in, at his work station, and ready to perform his work duties at 6:00 a.m. Mr. Stockdale was aware of this requirement. To clock in, Mr. Stockdale had to swipe his badge through the timekeeping machine. The clock-in process took a few seconds. Under the employer's work rules, the employer would deem a late arrival of an hour or less an incident of tardiness, but would deem a late arrival exceeding an hour an "absence." The employer treated these two types of attendance matters differently under the employer's work rules. The "absences" would be counted toward an 88-hour annual limit. Six tardies in a rolling 12-month period would subject Mr. Stockdale to a verbal warning. Seven tardies would subject him to a written warning. Eight tardies would subject Mr. Stockdale to a two-day suspension. Nine tardies in a rolling 12-month period would subject Mr. Stockdale to discharge from the employment. Mr. Stockdale was familiar with the written attendance policy. Mr. Stockdale understood that it might be advantageous to him under the attendance policy to be more than an hour late, rather than less than an hour late. Under the employer's policy, an employee was expected to notify the employer of absences, including late arrivals no later than

one hour after the scheduled start of the shift. In other words, if Mr. Stockdale was not required to provide notice of those absences that the employer termed tardies.

The final late arrival that triggered the discharge occurred on February 21, 2017. Mr. Stockdale had been at the emergency room getting treatment for his daughter until 2:30 a.m. and did not get home and go to bed until 2:45 a.m. Mr. Stockdale overslept and arrived at the workplace at 6:02 a.m. Mr. Stockdale waited in the parking lot for most of an hour and then clocked in at the stroke of 7:00 a.m. Had Mr. Stockdale clocked in a minute later, the employer would have deemed the late arrival an "absence" rather than a "tardy." As matter's stood the late arrival was Mr. Stockdale's ninth late arrival in a rolling 12-month period. Mr. Stockdale had been late for personal reasons on May 13, May 23, June 7, June 16, July 6 and July 7, 2016. In 2017, Mr. Stockdale was late for personal reasons on January 31 and February 15 before the final late arrival on February 21, 2017. The employer had issued warnings to Mr. Stockdale for attendance on June 16, July 6, and July 7, 2016 and had issued additional warnings on January 31 and February 15, 2017. The July 7 and February 15 warnings each included a two-day suspension.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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). 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 good cause for Mr. Stockdale's late arrival on February 21, 2017. Mr. Stockdale had been at the hospital dealing with an emergency situation until 2:30 a.m. and did not get home until 2:45 a.m. At that point, it was just three hours and 15 minutes before Mr. Stockdale was supposed to be at his work station ready to work. A reasonable person would have a substantially diminished ability to function under such circumstances. Mr. Stockdale's attempt to function on so little sleep was at odds with his body's need for sleep. This late arrival was not a run-of-the-mill oversleeping situation. Though Mr. Stockdale did not notify the employer of a need to be late, the employer's policy did not requirement him to provide such notice. The weight of the evidence establishes an absence on February 21, 2017 that was an excused absence under the applicable law. Because the final absence was an excused absence under the applicable law, the evidence fails to establish a current of misconduct. In the absence of a current act of misconduct, the discharge would not

disqualify Mr. Stockdale for unemployment insurance benefits. In the absence of a current act of misconduct, the administrative law judge need not consider the prior unexcused absences. In the absences of a current act of misconduct, those prior absences cannot serve as a basis for disqualifying Mr. Stockdale for unemployment insurance benefits. Mr. Stockdale is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The March 10, 2017, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs