

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ANDREA M MEYER**  
Claimant

**KPF STEEL FOUNDRY**  
Employer

**APPEAL NO. 21A-UI-06152-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 16, 2021, reference 02, 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 October 23, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on April 26, 2021. The claimant participated. Angela Gilbert represented the employer and presented additional testimony through Albert Sturm. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant. Exhibits 1, 2 and 3 were received into evidence.

**ISSUES:**

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: The claimant was employed by KPF Steel Foundry from September 28, 2020 until October 23, 2020, when the employer discharged her from the employment. The claimant's scheduled work hours were 5:00 a.m. to 1:30 p.m., Monday through Friday. Albert Sturm, Molding Line Supervisor, was the claimant's supervisor. They assigned the claimant to perform painting duties. The claimant was one of three women amongst the 36 employees who worked on the foundry's production floor.

The claimant last performed work for the employer on October 21, 2020. On that day, Mr. Sturm directed the claimant to paint two 300-pound molds. The claimant replied that she would paint the molds as soon as her male coworkers returned to assist her with the project. The claimant did not refuse to perform the assigned task and had not previously refused to perform any assigned tasks. The claimant was at that point three to four months pregnant. The painting process exposed the claimant to alcohol fumes. The claimant struggled with the alcohol fumes due to her pregnant state and was concerned the potential impact on her unborn

child if she inhaled industrial alcohol fumes. The claimant's male coworkers had up to that point taken it upon themselves to assist the claimant with handling the alcohol to set up the painting process. The male coworkers were due to return to the work area in five minutes. In response to this interaction and prior similar concerns that the claimant relied too heavily on assistance from others, Mr. Sturm decided to discharge the claimant from the employment. Mr. Sturm communicated this decision to his supervisor, Kevin Bender, General Supervisor, and to Angela Gilbert, Administrative Assistant, who drafted the discharge documentation. The discharge documentation stated the decision for the discharge as "Poor Work Performance." The discharge documentation made no reference to attendance matters. On October 22, 2020, the claimant did not report for work and did not give notice of her need to be absent from work. On that day, Ms. Gilbert attempted to reach the claimant by telephone to advise her that she was discharged from the employment. The claimant had previously requested October 23, 2020 off for a medical appointment and Mr. Sturm had previously approved the request. On October 23, Ms. Gilbert was able to reach the claimant and notified the claimant that she was discharged from the employment. The employer had the claimant return to the workplace to sign the discharge documentation.

Though the employer did not reference attendance as the basis of the discharge when discharging the claimant from the employment, the claimant's attendance was a concern throughout the brief employment and was a factor in the discharge decision. The claimant was supposed to start the employment on September 28, 2020, but was a no-call/no-show on that day and the next. The claimant's two-year-old son was sick. The claimant made no attempt to reach the employer. During an unpaid orientation meeting on September 25, 2020, Ms. Gilbert had told the claimant that she was required to call the workplace by 8:00 a.m. if she needed to be absent from a shift and required to fill out a time-off request form in advance of a scheduled absence.

When the claimant was a no-call/no-show for the first day of work, the employer was ready to terminate the employment at that time. However, the employer was desperate for help on the production floor and had Ms. Gilbert contact the claimant on September 29, 2020 to discuss whether the claimant was able to report on September 30, 2020. The claimant advised Ms. Gilbert that she had been absent on September 28, 2020 because she had personal matters to attend to. Ms. Gilbert reminded the claimant that she could have called the employer.

Though Mr. Sturm cites the interaction with the claimant on October 21, 2020 as the trigger for the discharge, Ms. Gilbert views the October 22, 2020 no-call/no-show absence as a second final incident that triggered the discharge.

The employer points to an approved early departure on October 14, 2020 and approved funeral leave on October 15, 2020 as additional factors in the discharge decision. The claimant's second cousin passed away on or about October 13, 2020. The claimant learned about the passing on October 14, 2020 and was visibly shaken up about the matter while at work. The claimant requested to leave work early on October 14 and Mr. Sturm approved the request. On October 14, 2020, the claimant also requested time off on October 15, 2020 to attend her cousin's funeral and Mr. Sturm approved the request. The claimant left work a couple hours before the scheduled end of her shift on October 15 to attend the funeral.

The claimant has also left work early on October 12, 2020 due to feeling ill in connection with handling the industrial alcohol and inhaling fumes. The claimant requested to leave early and Mr. Sturm approved the early departure.

The claimant had also left work midway through her shift on October 5, 2020, due to a medical appointment that she had forgotten about until that day. The claimant spoke with Mr. Sturm prior to her departure and Mr. Sturm approved the early departure.

## **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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

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 weight of the evidence in the record establishes that the employer had already made the decision on October 21, 2020 to discharge the claimant from the employment for performance issues and that the claimant's subsequent no-call/no-show absence on October 22, 2020 was not a factor in the discharge decision. Rather, that absence merely delayed giving notice to the claimant that she was discharged based on the performance concerns. This conclusion that the October 22 absence was not a factor in the discharge is supported by the fact that there was no mention of the absence or attendance in the discharge document or at any point when communicating with the claimant regarding the discharge.

The claimant's statement to the employer on October 21 that she would wait for assistance with the painting project did not constitute misconduct in connection with the employment. The claimant did not refuse to follow Mr. Sturm's directive. Rather, the claimant had a reasonable basis for desiring assistance in handling the industrial alcohol in light of her pregnant state and associated sensitivity to the fumes. There is no pattern of unreasonable refusal to perform work duties. The claimant's inability to perform to the employer's satisfaction, and the employer's perception that she lacked the required initiative, did not establish misconduct in connection with the employment.

At the time the employer made the decision to discharge the claimant from the employment, the most recent absence that could have factored was the funeral-related absence on October 15, 2020. The employer had approved that absence and the related October 14 earlier departure in advance of the departures. Both absences were excused absences under the applicable law. The employer had also approved the claimant's earlier October 5 illness-related prior departure prior to the claimant leaving the workplace. The employer had approved the claimant's October 12 early departure for the medical appointment. Both of these additional absences were excused absences under the applicable law. The September 28 and 29 no-call/no-show absences were unexcused absences, but did not constitute current acts at the time of the discharge.

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

**DECISION:**

The February 16, 2021, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.



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James E. Timberland  
Administrative Law Judge

April 30, 2021  
Decision Dated and Mailed

jet/scn