

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**STACEY S UTSLER**  
Claimant

**THE LAUNDRY PLACE LLC**  
Employer

**APPEAL NO. 22A-UI-07136-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/20/22  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

On March 24, 2022, the employer filed a timely appeal from the March 21, 2022 (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 February 20, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on May 2, 2022. Claimant Stacey Utsler participated personally and was represented by attorney Stuart Higgins. Attorney Mariah Sukalski represented the employer and presented testimony through Michael Ramberg. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A and B into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

**ISSUES:**

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:

Stacey Utsler (claimant) was employed by The Laundry Place, L.L.C. as a full-time laundry attendant and maintenance worker until February 2022, when Michael Ramberg, President and business owner, discharged her from the employment for alleged insubordination and alleged bad attitude. The employer operates nine laundromats in the Des Moines metropolitan area. The claimant mainly worked at three locations, but performed work at all locations. The claimant began the employment in April 2021 as a laundry attendant. The employer had the claimant electronically sign to acknowledge the employer's work rules at the start of the employment. In the summer of 2020, the claimant agreed to take on additional maintenance duties in exchange for a promised raise. The claimant performed the additional duties, but the employer did not follow through with the promised raise. The claimant did not have a set work schedule. Area Managers Amy Warden and Regina Graham were the claimant's immediate supervisors. During the last week or two of the employment, one of those area managers

introduced the claimant to a new area manager in training, Isaac Langford. All three area managers have since separated from the employer.

After Ms. Utsler completed her February 20, 2022 shift at 7:00 p.m., Mr. Ramberg attempted to call her at 8:37 p.m. Mr. Ramberg was in the habit of calling Ms. Utsler outside her work hours, usually to discuss non-work related matters. During a time when Ms. Utsler was experiencing turmoil in her marriage, Mr. Ramberg called to make unwelcome solicitations that the claimant join him for dinner and other events. Mr. Ramberg would also call the claimant to boast about improvements he had made to the business or to rant. Though the employer provided no on-call compensation, the employer expected the claimant to be available to take his calls at all times. Within in a couple minutes of missing the call on February 20, 2022, the claimant sent a text message to the employer asking what he needed and indicating that she had a headache. The claimant asked whether the employer had called about something important. The employer responded that he would not have called if it had not been important. The employer then told the claimant that he was reducing her \$11.00 an hour wage by \$1.00 an hour, due to the missed call, and would further reduce her pay by \$1.00 an hour for each subsequent missed call. When the claimant protested that such conduct was "illegal," the employer discharged her from the employment.

The employer alleges a customer complained to another laundry attendant, Bobbie Jo Burden, about the claimant a couple weeks before the discharge. Ms. Burden has since separated from the employer. The employer did not speak with the complaining customer or with the claimant about the matter. The claimant denies the customer complaint was about her.

The employer asserts the claimant was tardy on February 9, 13, 15 and 20, 2022. However the purported late arrivals cited by the employer were either instances wherein the claimant could not clock in via the software application the employer required the claimant to install on her phone and a manager adjusted her time pursuant to protocol or instances wherein the claimant had to take longer cleaning at one work location, which delayed her arrival at the next work location. The area managers had recently reminded staff, including the claimant that it was important to report for work on time due to an upcoming operations review. The claimant received no specific warning or reprimands in the employment prior to being discharged from the employment.

#### **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 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).

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 evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence to prove any unexcused absences. The evidence does not establish insubordination on the part of the claimant. The employer's expectation that claimant be available during off-duty hours without pay to take the employer's phone calls was unreasonable under the circumstances. The employer unreasonably escalated the February 20, 2022 interaction. The employer's unreasonableness extended to telling the claimant he was reducing her pay for not being available to take his call. The claimant expressed a reasonable concern about the announced change in pay. If the claimant had quit in response to the notice of the pay reduction, such quit would have been for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(1). The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The March 21, 2022 (reference 02) decision is affirmed. The claimant was discharged on February 20, 2022 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

May 13, 2022  
Decision Dated and Mailed

jet/kmj