IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LORINE S BLASSINGAME
Claimant

WINNEBAGO INDUSTRIES
Employer

APPEAL NO. 14A-UI-03434-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/02/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Lorine Blassingame filed a timely appeal from the March 25, 2014, reference 02, decision that disqualified her for benefits. After due notice was issued, a hearing was held on April 22, 2014. Ms. Blassingame participated. Susan Gardner represented the employer.

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: Lorine Blassingame was employed by Winnebago Industries as a full-time assembler from October 2013 until March 3, 2014, when the employer discharged her for attendance. Ms. Blassingame's usual start time was 10:30 p.m., but the employer would have her start at 9:30 p.m. when overtime work was required. If Ms. Blassingame needed to be absent from work the employer's written attendance policy required that she call a designated number at least one hour after the scheduled start of her shift and leave a message. The policy was contained in the handbook that the employer provided to Ms. Blassingame at the start of her employment and Ms. Blassingame was aware of the policy.

The final absence that triggered the discharge occurred on March 2, 2014. On February 28, Ms. Blassingame had traveled to Chicago to visit her spouse in the hospital. Ms. Blassingame traveled with her sister, who also lives in Charles City. The sister drove. At the time Ms. Blassingame traveled to Chicago, she knew she was scheduled to work at 10:30 p.m. on March 2. Ms. Blassingame stayed in Chicago until it was too late to return to Iowa in time for work. Ms. Blassingame delayed her return to Iowa to accommodate her sister's schedule. Ms. Blassingame and her sister encountered inclement weather when they started their belated trip from Chicago and turned around.

The final absence that triggered the discharge followed several prior absences. Ms. Blassingame was absent due to a lack of a babysitter on November 17, January 3 and 5,

February 2, 3, 16 and 19. While Ms. Blassingame asserts she notified the employer in connection with each of those absences, the employer's records indicate that she failed to notify the employer of each of those absences. Ms. Blassingame left work early on November 3 to care for her sick child and properly notified a supervisor. On December 8, Ms. Blassingame reported for work with a bleeding, bandaged head and a supervisor sent her home. On January 6, Ms. Blassingame was absent due to illness and properly reported the absence. On February 13, Ms. Blassingame was late to work due to a lack of transportation. On February 23, Ms. Blassingame was absent due to the need to care for her sick child and properly notified the employer.

In February, the employer had issued three reprimands to Ms. Blassingame for attendance and suspended her for two days for attendance.

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). 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 excessive unexcused absences. The final absence was an unexcused absence related to transportation. Ms. Blassingame elected to stay too long in Chicago even though she knew she had to work on the evening of March 2, 2014. Ms. Blassingame stayed so long in Chicago that she would not have been able to get to work on time in the best of weather conditions. Each of the absences that was due to lack of a babysitter was an unexcused absence regardless of whether the absence was properly reported to the employer. The additional absence due to transportation was an unexcused absence. The absences were sufficient to establish excessive unexcused absences. They occurred in the context of repeated warnings for attendance and a suspension for attendance. The absences that were due to illness and properly reported to the employer were excused absences under the applicable law.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Blassingame was discharged for misconduct. Accordingly, Ms. Blassingame is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The claims deputy's March 25, 2014, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs