

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFANY SCHAEFFER**

Claimant

**APPEAL NO. 19A-UI-05277-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHARLES GABUS FORD INC**

Employer

**OC: 06/02/19**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 19, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 31, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on July 25, 2019. Claimant Tiffany Schaeffer participated personally and was represented by attorney Emily McCarty. Attorney Steven Shindler represented the employer and presented testimony through Nick Young, Adam Ratzlaff and Kelsey Gabus McBride. Exhibits 1 through 8 and Department Exhibit 10 were received into evidence. The administrative law judge took official notice of the fact-finding materials (marked D-1 through D-9) for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Tiffany Schaeffer was employed by Charles Gabus Ford, Inc. as a full-time sales consultant from 2016 until May 31, 2019, when the employer discharged her for attendance. The employer has a written attendance policy contained in an employee handbook. Under the written policy, if Ms. Schaeffer needed to be absent from work, she was required to telephone her supervisor as far in advance to give notice. Ms. Schaeffer was aware of the absence reporting requirement at all relevant times. Though the written policy required a telephone call, the Sales Managers accepted text messages as an appropriate form of notice.

Ms. Schaeffer last performed work for the employer on Saturday, May 25, 2019. Ms. Schaeffer thereafter commenced an approved period of vacation. At the time Ms. Schaeffer commenced her vacation, she was aware that she was next scheduled to work an 8:00 a.m. to 4:00 p.m. shift on May 29, 2019. Ms. Schaeffer flew to Las Vegas, Nevada for her vacation, with a return flight booked for the evening of May 28, 2019. On the evening of May 28, 2019, Ms. Schaeffer was onboard for the first leg of her return flight from Las Vegas. The flight home included a 30 to 40-minute scheduled layover in Los Angeles, California. After Ms. Schaeffer arrived at the Los Angeles International Airport (LAX), she learned that the airline had overbooked the flight from Los Angeles to Des Moines and that she was one of the passengers left without a seat on that flight. To secure a flight home as soon as possible, Ms. Schaeffer accepted a flight from Los Angeles that included a scheduled layover in Texas. Ms. Schaeffer boarded the flight to Texas at about 3:00 a.m. on May 29, 2019. Before Ms. Schaeffer left the Los Angeles airport, she composed a text message to Sales Manager Nick Young. Ms. Schaeffer wrote: "I need to call off today. I'm in the 8am-4 shift. Flight issues. I'm actually stuck in LAX right now." Ms. Schaeffer arrived in Texas at about 6:15 a.m. on May 29, 2019. Ms. Schaeffer's text message to Mr. Young did not transmit until Ms. Schaeffer was on the ground in Texas. Mr. Young received the message at 6:29 a.m. Ms. Schaeffer arrived in Des Moines sometime between 10:00 a.m. and 11:00 a.m. The employer replied, "That's not very good planning." Ms. Schaeffer sent another text message and wrote, "Worse flying experience ever. Any my luggage got left in Vegas and will have to be delivered to me tomorrow." Ms. Schaeffer followed up with a copy of a message from American Airlines indicating that her bags were delayed for her trip to Des Moines. The employer acknowledged the extenuating circumstances beyond Ms. Schaeffer's control and initially treated the May 29, 2019 absence as an excused absence.

Ms. Schaeffer was next scheduled to work from noon to 8:00 p.m. on May 30, 2019. On that morning, Ms. Schaeffer corresponded with Sales Manager Adam Ratzlaff regarding a couple deals she was working on. Ms. Schaeffer was then absent from that shift without notifying the employer that she would be absent from the shift.

Ms. Schaeffer was next scheduled to work at 8:00 a.m. to 6:00 p.m. on May 31, 2019. At 7:28 a.m., Ms. Schaeffer sent a text message to Sales Manager Adam Ratzlaff. Ms. Schaeffer wrote "I cannot work again today. I need to call off." Mr. Ratzlaff sent a response a minute after asking why Ms. Schaeffer needed to be absent. Ms. Schaeffer did not respond to that message. Ms. Schaeffer was absent that morning because she needed to seek medical evaluation of her infant child. Ms. Schaeffer did not have an appointment scheduled, but was hoping to have the child seen by a doctor on short notice. After Ms. Schaeffer sent her message to Mr. Ratzlaff, she sat down her phone so that she could bathe her child. For that reason, Ms. Schaeffer did not immediately see Mr. Ratzlaff's message asking why she would be absent that day. Between 9:00 and 10:00 a.m., Kelsey Gabus McBride, Human Resources Manager, sent an email message to Ms. Schaeffer stating that Ms. Schaeffer was discharged for attendance.

The employer considered prior absences when making the decision to discharge Ms. Schaeffer from the employment. In June 2017, Ms. Schaeffer was 90 minutes late without notice to the employer. On August 24, 2018, Ms. Schaeffer was 25 minutes late without notice to the employer. That absence prompted a written warning. On October 8, 2018, Ms. Schaeffer was absent for personal reasons and properly notified the employer. On December 27, 2018, Ms. Schaeffer was absent due to illness and properly notified the employer.

## **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).

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 a discharge for no disqualifying reason. The May 29, 2019 absence was attributable to matters beyond Ms. Schaeffer's control, was properly reported to the employer, and was an excused absence under the applicable law. The May 30, 2019 absence was a no-call/no-show. Due to the lack of notice, that absence was an unexcused absence under the applicable law. The May 31, 2019 absence was based on Ms. Schaeffer's need to seek medical attention for her infant child, was properly reported to the employer, and was an excused absence under the applicable law. Prior to the May 30, 2019 an unexcused absence, one must look all the way back to October 8, 2018 to find another absence that would be an unexcused absence under the applicable law. Given the roughly seven-month space between the final unexcused absence and the next most recent unexcused absence, the evidence does not indicate unexcused absences that were excessive. Ms. Schaeffer is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The June 19, 2019, reference 01, decision is affirmed. The claimant was discharged on May 31, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn