

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANELLE K HILL  
PO BOX 733  
CEDAR RAPIDS IA 52406-0733**

**ROSS HOLDINGS LLC  
1395 STAMY ROAD  
HIAWATHA IA 52233-9500**

**APPEAL NO. 09A-UI-17653-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANELLE K HILL**  
Claimant

**APPEAL NO. 09A-UI-17653-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSS HOLDINGS LLC**  
Employer

**OC: 10/25/09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Danelle Hill filed a timely appeal from the November 16, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 5, 2010. Ms. Hill participated. Shane Brekke, Site Manager, 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: Danelle Hill was employed by Ross Holdings, L.L.C., as a full-time telephone service representative from September 2008 until October 19, 2009, when the employer discharged her for attendance. Ms. Hill's immediate supervisor was Annie Sanders, Supervisor.

The final absence that triggered the discharge occurred on October 19, 2009, when Ms. Hill was absent from work and failed to notify the employer. The employer's established policy required that Ms. Hill notify the employer at least an hour before the schedule start of her shift if she needed to be absent.

Ms. Hill was on court-ordered probation throughout the employment and frequently missed part of her scheduled workday due to an appointment with drug court, due to mandatory drug testing, or the requirement that she meet with her probation officer. Ms. Hill worked less than her scheduled shift on July 7, 10, 14, 15, 21, and 24. Ms. Hill was absent without notifying the employer on July 8 and absent for personal reasons on July 24. Ms. Hill was absent without notifying the employer on August 3. Ms. Hill worked less than her scheduled shift on August 4, 5, 10, and 24. Ms. Hill was absent for personal reasons on August 12 and 24. Ms. Hill absent from part of her shift on September 3 and 10, due to dental appointments and properly notified her supervisor. Ms. Hill worked less than her full shift on September 2, 8, 9, 14, 15, 16, 23, and 29 for personal reasons. Ms. Hill was absent without notifying the employer on September 21. Ms. Hill was then absent on September 30, October 1 and October 2

because she was incarcerated because she had violated her probation by using a controlled substance. Ms. Hill worked less than her full shift on October 6, 9, 15, and 16 for personal reasons before the final no-call, no-show absence on October 19.

Ms. Hill received four reprimands for attendance during the employment.

### **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).

The evidence indicates a final unexcused absence on October 19, 2009. This unexcused absence followed many similar unexcused absences almost too numerous to list. Ms. Hill had received four reprimands for attendance and most certainly knew she was at risk of losing her job for poor attendance.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hill was discharged for misconduct. Accordingly, Ms. Hill 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 paid to Ms. Hill.

**DECISION:**

The Agency representative's November 16, 2009, reference 01, 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 will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs

