

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BYRON J WILES**  
Claimant

**APPEAL NO. 17A-UI-08734-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RAVI LODGING INC**  
Employer

**OC: 0730/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Byron Wiles filed an appeal from the August 17, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Wiles was discharged on July 26, 2017 for insubordination in connection with the employment. After due notice was issued, a hearing was held on September 13, 2017. Mr. Wiles participated. Adam Barksdale 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: Byron Wiles was employed by Ravi Lodging, Inc., d/b/a Hampton Inn, as a full-time front desk night auditor until July 27, 2017, when Adam Barksdale, General Manager, discharged him from the employment. Mr. Wiles' immediate supervisor was Juanita Shorter, Assistant General Manager. Mr. Wiles' shift hours were 11:00 p.m. to 7:00 a.m. Mr. Wiles usually worked Sunday night through Friday morning. Mr. Wiles started the employment in the fall of 2015 as a part-time employment, but subsequently transitioned to full-time employment. From early 2016 until the end of the employment, folding bath towels, hand towels, wash cloths and bath mats was an essential component of Mr. Wiles' night auditor duties. In early 2016, Mr. Barksdale determined that it would be more cost effective to shift a substantial portion of the towel folding duties from the laundry staff to the evening and overnight front desk auditors. Mr. Wiles resented being asked to perform laundry duties and occasionally made his feelings known to the employer through word or deed.

The final incident that triggered the discharge occurred on the morning of July 27, 2017, when Mr. Barksdale arrived for work and observed that Mr. Wiles had left a bin of towels unfolded. Mr. Wiles had been assigned to fold two or three bins of towels during the overnight shift. Mr. Barksdale had previously imposed a three and a half bin limit on the number of towels he expected the evening and overnight auditors to complete through their combined effort. Each bin contained 200 to 250 items. It would take about an hour to fold one bin. Mr. Wiles had had ample time to complete the task during his overnight shift, but had intentionally left one bin

unfolded. At the same time Mr. Barksdale address the matter of not all towels being folded, he also indicated displeasure that Mr. Wiles had not moved a load of wet towels from the washer to the dryer. Mr. Wiles asked why the laundry staff could not do their own job.

On July 19, 2017, Ms. Shorter had left a copy of the night auditor job description for Mr. Wiles to sign. Mr. Wiles had received the same job description at the start of the employment. Ms. Shorter left the job description for Mr. Wiles to sign to reinforce the fact that his job duties had not changed and that he was expected to remain productive and cooperative during his work hours. Mr. Wiles knew the job description was there for him to sign, but did not sign it because he was upset about the laundry folding duties. Instead Mr. Wiles intentionally left the job description unsigned and attached a note to it stating that he was taking the next three days off to look for another job. Mr. Wiles did not follow the established protocol for requesting time off. The employer had other employees cover Mr. Wiles shifts.

On July 2, 2017, Mr. Barksdale notified Mr. Wiles toward the start of his shift that there were four bins of towels that needed to be folded during the overnight shift. Mr. Barksdale told Mr. Wiles he knew that was a lot of towels, but that Mr. Wiles should be able to accomplish the task during his shift. Mr. Wiles stayed an extra hour to continue folding towels. Other employees assisted Mr. Wiles with completing the assigned folding.

On February 10, 2017, Mr. Wiles completed the assigned folding, but did not complete the associated task of placing the folded towels in the housekeeping bin in the housekeeping area.

On October 14, 2016, Mr. Wiles left two hours before the scheduled end of his shift without ensuring there was appropriate coverage for the front desk. Mr. Wiles wanted to leave early to engage in recreation. Mr. Wiles had arranged for another front desk auditor to complete that shift, but that person did not appear. Before Mr. Wiles left, he showed breakfast duty employee how to check out guests on the computer and then left. The breakfast duty employee was not authorized to man the front desk. The employer reprimanded Mr. Wiles for what the employer deemed a safety violation. Mr. Wiles concedes that he exercised poor judgment in the matter.

In February 2016, Mr. Wiles accessed an employee phone number list so that he could contact a female coworker to pursue a personal relationship. The female coworker rejected the advance and complained to the employer about the unauthorized use of her contact information.

#### **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). 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).

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).

The evidence in the record establishes a discharge for misconduct in connection with the employment based on a pattern of insubordination and excessive unexcused absences. The final act of insubordination was Mr. Wiles' decision not to fold the last bin of towels despite having ample time to complete the task. The employer's directive that Mr. Wiles complete the task. Mr. Wiles refusal to complete the task was unreasonable. This incident followed Mr. Wiles' July 19 intentional failure to sign the job description and the notice to the employer that he would be taking the next three days off to look for another job. The employer reasonably expected Mr. Wiles to acknowledge the job description. Mr. Wiles unreasonably decided not to

comply and then, to drive home his displeasure, unreasonably asserted he was taking three days off. These two incidents are sufficient to establish that Mr. Wiles was intent on serving his own interests with intentional and substantial disregard of the employer's interests. The evidence does not indicate subordination on July 2, 2017, but does establish insubordination in February 2017, when Mr. Wiles intentionally and unreasonably did not put the folded towels in the housekeeping bin.

While Mr. Wiles' discharge was not triggered by the attendance issues, the weight of the evidence indicates they were a factor in the discharge decision. 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 establishes unexcused absences on October 14, 2016, and on July 23, 24 and 25, 2017. The unexcused absences were excessive and constituted a separate form of misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wiles was discharged for misconduct. Accordingly, Mr. Wiles is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Wiles must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The August 17, 2017, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The discharge date is corrected to July 27, 2017. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs