IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ALEXANDER E WILSON
Claimant

BRIDGESTONE AMERICAS TIRE
Employer

APPEAL NO. 12A-UI-06714-JT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/13/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Alexander Wilson filed a timely appeal from the June 5, 2012, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on July 10, 2012. Claimant participated. The employer did not appear for the hearing.

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: Alexander Wilson was employed by Bridgestone Americas Tire as a full-time relief helper/production worker from 2010 and last performed work for the employer on April 10, 2012. Mr. Wilson completed his shift on that day. Mr. Wilson was next scheduled to work on April 13. As Mr. Wilson was leaving the workplace on April 10, 2012, he stepped wrong on a rock as he was getting into his car and injured his ankle. Mr. Wilson initially thought he had just sprained the ankle and attempted to treat it by icing it and elevating it. Mr. Wilson saw his primary care doctor on April 12 and the primary care doctor referred him to a specialist. Mr. Wilson saw the specialist on April 15 and underwent an MRI on April 16. The MRI revealed a partial tear in Mr. Wilson's Achilles tendon. The specialist took Mr. Wilson off work until April 30, 2012. The specialist later extended Mr. Wilson's time off to May 30, 2012. In the meantime, Mr. Wilson had to wear a walking boot device while his foot healed.

On April 12, Mr. Wilson contacted the employer's human resources department to let the employer know of his injury and that his doctor had taken him off work. The employer provided a form for Mr. Wilson to take to his doctor. Mr. Wilson took the form to the doctor. The doctor completed the form indicating Mr. Wilson needed to be off work through April 29, 2012. Mr. Wilson returned the form to the employer. Mr. Wilson continued on an approved and paid leave of absence.

On May 15, Mr. Wilson's doctor completed another document to support the leave. The doctor's office faxed the leave form to the employer on May 16. Mr. Wilson had continued on an approved leave and had not heard anything from the employer to indicate otherwise. Mr. Wilson then received a health insurance document that indicated the employer had terminated his insurance coverage on May 10, 2012. Mr. Wilson contacted the number on the document and was told his employment had ended. Mr. Wilson contacted the employer's human resources department and was told the employment had been terminated due to two no-call/no-show absences.

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 employer did not participate in the hearing and thereby failed to present any evidence to support the allegation that Mr. Wilson was discharged for misconduct. The evidence in the record fails to establish any unexcused absences. The evidence in the record instead indicates that the employer discharged Mr. Wilson from the employment while he was on an approved medical leave of absence.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wilson was discharged for no disqualifying reason. Accordingly, Mr. Wilson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Wilson.

DECISION:

The Agency representative's June 5, 2012, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. 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/css