

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DEREK J CHANDLER
Claimant

APPEAL NO. 18A-UI-12122-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 11/25/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Derek Chandler filed a timely appeal from the December 10, 2018, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged, based on the deputy's conclusion that Mr. Chandler was discharged on November 20, 2018 for excessive unexcused absenteeism and tardiness. After due notice was issued, a hearing was held on January 7, 2019. Mr. Chandler participated in the hearing. The employer did not comply with hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Chandler was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed the fact-finding materials and the appeal attachment, the administrative law judge finds: Derek Chandler was employed by Nordstrom, Inc. as a full-time employee at the employer's Distribution Center in Dubuque. from 2016 until November 20, 2018, when the employer discharged him for attendance. Mr. Chandler's usual work hours were 3:00 p.m. to 11:00 p.m. or 12:00 a.m., Monday through Friday. Mr. Chandler was also required to work on Saturdays as needed.

The final absence that triggered the discharge occurred on November 19, 2018, when Mr. Chandler was absent due to his need to care for his sick infant. On that day, Mr. Chandler's child care provider summoned him to have him collect his ill child from the provider's facility out of concern that other children in the provider's care would be exposed to communicable illness. Mr. Chandler collected his child from the child care provider's facility and took his child to a medical provider for evaluation and treatment. Once Mr. Chandler was done seeking medical care for his child, he took the child home and cared for the child for the remainder of the day. The medical provider gave Mr. Chandler a note indicating that he should be excused from work

that day. Mr. Chandler properly notified the employer of his need to be absent by calling and leaving a voice mail message at the designated absence reporting line prior to the scheduled start of his shift. When Mr. Chandler returned to work on November 20, 2018, his supervisor notified him that he was discharged for attendance. The next most recent absence that factored in the discharge occurred on October 22, 2018.

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 a discharge matter. See Iowa Code section 96.6(2). In connection with the fact-finding interview, the deputy erroneously relieved the employer of its burden of proving disqualifying misconduct in connection with the employment and effectively shifted the burden of proof to the claimant. 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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(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 employer failed to participate in the appeal hearing and failed to present any evidence to meet its burden of proving disqualifying misconduct in connection with the employment. The final absence that triggered the discharge was based on Mr. Chandler's need to care for his sick infant. Mr. Chandler provided proper notice to the employer of his need to be absent. For these reasons, the final absence was an excused absence under the applicable law and cannot serve as a basis for disqualifying Mr. Chandler for unemployment insurance benefits. The next most recent absence was about a month earlier. The evidence does not establish a current act of misconduct. Mr. Chandler is eligible for unemployment insurance benefits provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The December 10, 2018, reference 01, decision is reversed. The claimant was discharged on November 20, 2018 for no disqualifying reason. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

jet/rvs