

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MEGAN R SEDLACEK**  
Claimant

**APPEAL NO. 12A-UI-13112-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 10/07/12**  
**Claimant: Appellant (2-R)**

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

**STATEMENT OF THE CASE:**

Megan Sedlacek filed a timely appeal from the October 24, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 4, 2012. Ms. Sedlacek participated personally and was represented by attorney Crystal Raiber. Mary Eggenburg, Benefits Specialist, represented the employer and presented additional testimony through Cathy Barrett, Facilities Management Human Resources Manager. Exhibits One, Two and Three were received into evidence.

**ISSUE:**

Whether Ms. Sedlacek was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits. The administrative law judge concludes that Ms. Sedlacek was discharged for no disqualifying reason.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Megan Sedlacek was employed by the University of Iowa as a full-time custodian from 2006 until October 9, 2012, when Larry Grimes, Facilities Services Coordinator, and Cathy Barrett, Facilities Management Human Resources Manager, discharged her for attendance. Mr. Grimes was Ms. Sedlacek's immediate supervisor. The final incident that triggered the discharge occurred on October 8, 2012, when Ms. Sedlacek was absent due to illness, depression, and properly reported the absence to the employer. The employer's work rules required that Ms. Sedlacek report the absence no later than 30 minutes prior to the scheduled start of her shift. Ms. Sedlacek's shift started at 5:00 p.m. Ms. Sedlacek reported the absence at 4:30 p.m.

The employer based its decision to discharge Ms. Sedlacek on a last-chance agreement that was effective April 14, 2011. Ms. Sedlacek, AFSCME representatives and University representatives had all signed the agreement. Number paragraphs 5 and 6 of the agreement stated as follows:

5. The parties understand that any absence without pay (AWOP) after the date of this agreement will constitute grounds for the immediate termination of Employee's employment with the University of Iowa.

a. For purposes of this agreement only, AWOP means that at the time Employee is absent from work the Employee does not have enough accrued leave to completely cover the absence. Accruals that are not received until the 1st day of the following month will not be allowed to cover the absence.

b. Also, for purposes of this agreement only, AWOP does not include any absences covered by FMLA.

6. A failure on the Employee's part to comply with any of the terms and conditions of this agreement, merit work rules or University policies/procedures within eighteen (18) months from the date of this agreement will constitute grounds for the immediate termination of Employee's employment with the University of Iowa.

The University had notified Ms. Sedlacek in writing on July 30, 2012 that her 2012 available FMLA leave time would be exhausted as of August 14, 2012.

With regard to the October 8, 2012 absence, Ms. Sedlacek had accrued sick time and vacation time to cover 4.5 hours of the eight-hour absence.

The last-chance agreement was to expire on October 14, 2012.

Though the employer based the discharge decision on the April 2011 last-chance agreement, Ms. Sedlacek had other absences in 2012, prior to the October 8, 2012 absence that triggered the discharge. Ms. Sedlacek had missed work in connection with a worker's compensation injury that occurred on May 24, 2012. After that injury, Ms. Sedlacek had returned to work on a half-time basis during September 26-30, 2012 and on a full-time basis during October 1-5, 2012. Ms. Sedlacek's next scheduled workday after October 5 was Monday, October 8. Ms. Sedlacek had additional absences in 2012, but all but one of those absences was due to illness properly reported to the employer. The remaining 2012 absence was based on Ms. Sedlacek's need to attend a family member's funeral.

#### **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).

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.

This case is not about whether the University of Iowa appropriately exercised its authority in determining to discharge Ms. Sedlacek from the employment. This case instead concerns the separate and distinct issue of whether Ms. Sedlacek was discharged for a reason that disqualifies her for unemployment insurance benefits. The final absence that triggered the discharge was for illness properly reported to the employer. That absence was an excused absence under the applicable law. Ms. Sedlacek's other absences in 2012 were excused

absences under the applicable law. The law does not allow the administrative law judge to use absences that are excused absences under the applicable law as a basis for disqualifying a claimant for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Sedlacek was discharged for no disqualifying reason. Ms. Sedlacek is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

The evidence presented at the appeal hearing raises the question of whether Ms. Sedlacek has been able to work and available for work since she established her claim for benefits. This matter will be remanded to the Claims Division so that those issues may be investigated and adjudicated. Any determination of Ms. Sedlacek's work ability and availability should include consideration of medical documentation regarding her mental health issues and her back issues. No such documentation was presented at the appeal hearing.

**DECISION:**

The Agency representative's October 24, 2012, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter will be remanded to the Claims Division so that those issues may be investigated and adjudicated. Any determination of the claimant's work ability and availability should include consideration of medical documentation regarding her mental health issues and her back issues.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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