

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CALEB J PRITCHARD
Claimant

APPEAL NO. 20A-UI-12427-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

OC: 04/12/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

Caleb Pritchard filed a timely appeal from the October 2, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 15, 2019 for excessive unexcused absenteeism and tardiness. After due notice was issued, a hearing was held on December 8, 2020. Mr. Pritchard participated. Connie Hickerson of Equifax represented the employer and presented testimony through Hannah Hopkins. Exhibits 1 through 4 were received into evidence.

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: Caleb Pritchard was employed by Horseshoe Council Bluffs as a part-time table games dealer from September 23, 2019 until December 15, 2019, when the employer discharged him for attendance. At the start of the employment, the employer provided Mr. Pritchard with an employee handbook that contained the employer's attendance policy and reviewed the policy. Under the employer's policy, Mr. Pritchard was required to call the department phone number at least two hours prior to the scheduled start of his shift if he needed to be absent or late. Mr. Pritchard was late for orientation on September 24 and 25, 2019 for personal reasons and used up both of his annual "life happens" days in connection with those late arrivals. Those late arrivals did not factor in the discharge. However, several subsequent absences did factor in the discharge. On September 26, 2019, Mr. Pritchard was late for personal reasons. On October 3, 2019, Mr. Pritchard left work early with proper notice for a reason neither he nor the employer can recall. On October 6, 2019, Mr. Pritchard was absent with proper notice to the employer for a reason neither he nor the employer can recall. Mr. Pritchard was absent from shifts on October 13, 19, 24, and 31, as well on November 3, 2019, and provided untimely notice to the employer. The employer issued a "final" written warning to Mr. Pritchard on November 4, 2019 in which the employer stated further absence would result in discipline up to

and including discharge from the employment. The final absence that factored in the discharge occurred on December 12, 2019, when Mr. Pritchard was late for personal reasons. On December 15, 2019, the employer met with Mr. Pritchard and discharged him from the employment.

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).

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 December 15, 2019 discharge for misconduct in connection with the employment. The discharge was based on excessive unexcused absences. The evidence establishes unexcused absence in connection with all of the absence dates except the early departure on October 3 and the absence with proper notice on October 6. Several of the absences were unexcused due to the lack of two-hour notice. Other concerned tardiness without a reasonable basis for being late. Mr. Pritchard's chronic attendance issues demonstrated an intentional and substantial disregard for the employer's interests and constituted misconduct in connection with the employment. The final absence the claimant was issued a warning that the employment was in jeopardy. Mr. Pritchard is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Pritchard must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The October 2, 2020, reference 01, decision is affirmed. The claimant was discharged on December 15, 2020 for misconduct in connection with the employment, based on excessive unexcused absences. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

This matter is remanded to the Benefits Bureau for determination of whether and when the claimant requalified for benefits by earning 10 times his weekly benefit amount subsequent to the December 15, 2019 separation from this employer.



James E. Timberland
Administrative Law Judge

December 15, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**