

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE A WILLIAMS**  
Claimant

**APPEAL NO. 15A-UI-04351-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EATON CORPORATION**  
Employer

**OC: 03/15/15**  
**Claimant: Appellant (2/R)**

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

**STATEMENT OF THE CASE:**

Denise Williams filed a timely appeal from the March 31, 2015, reference 01, decision that disqualified her from benefits and that relieve the employer liability for benefits, based on an agency conclusion that she had voluntarily quit on March 17, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 12, 2015. Ms. Williams participated personally and was represented by attorney Katrina Schaefer. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the fact-finding materials.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production line inspector from 2010 until March 18, 2015, when the employer discharged her for attendance.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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).

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 did not present any evidence to establish either a voluntary quit or a discharge for misconduct in connection with the employment. The evidence in the record fails to support the conclusion that the claimant voluntarily quit the employment. Because the employer presented no evidence to support the allegation that the claimant was discharged for misconduct, misconduct cannot be established. See 871 IAC 24.32(4).

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

Given the claimant's testimony concerning her need to be away from work to support her daughter and to provide care for her newborn grandson, this matter must be remanded to the Benefits Bureau for determination of whether the claimant has been available for work within the meaning of the law since she established her claim for benefits.

**DECISION:**

The March 31, 2015, 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 is remanded to the Benefits Bureau for termination whether the claimant has been available for work within the meaning of the law since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs

