

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACY L DECKER**

Claimant

**APPEAL NO. 06A-UI-09136-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 08/06/06 R: 03  
Claimant: Respondent (1-R)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

**STATEMENT OF THE CASE:**

Cargill Meat Solutions filed a timely appeal from the August 30, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 26, 2006. Claimant Stacy Decker participated and presented additional testimony from her boyfriend, Jesse Hansen. Assistant Human Resources Manager Katie Dierks represented the employer. The administrative law judge took official notice of the Agency's records regarding benefits disbursed to the claimant.

**ISSUE:**

Whether Ms. Decker was discharged for misconduct, based on excessive unexcused absences, that disqualifies her for benefits. She was not.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Stacy Decker commenced her full-time employment at Cargill Meat Solutions on November 25, 2002. Ms. Decker last performed services for the employer on January 4, 2006. Ms. Decker was thereafter absent due to prolonged illness. The illness began as pneumonia. Ms. Decker subsequently learned that she has early symptoms of emphysema. Ms. Decker worked in a refrigerated area and her doctor did not want her to prematurely return to the employment. Ms. Decker properly notified the employer each day she was absent by calling the designated attendance telephone number and leaving appropriate information. In addition, Ms. Decker provided the employer with several doctors' notes to excuse the ongoing absence. Ms. Decker provided these notes directly to the employer's nursing staff, pursuant to the employer's policy. At the end of March, Ms. Decker's supervisor contacted Assistant Human Resources Manager Katie Dierks regarding the prolonged absence. Based on this contact, Ms. Dierks contacted the nursing department and learned that Ms. Decker has most recently provided a doctor's note that said she could return to work on February 27. On March 30, Ms. Dierks sent a letter to Ms. Decker. Ms. Dierks advised Ms. Decker that the employer required further documentation concerning the need for the prolonged absence. Ms. Dierks further indicated that Ms. Decker's employment would be terminated if the employer did not hear back from her by April 14. The employer erroneously addressed the letter to 304 – 3rd Street, when Ms. Decker lived on 3rd Avenue. Ms. Decker did not receive the employer's letter. The post office returned the letter to the employer as undeliverable. The post office wrote "Avenue" on the envelope, but it is unclear

whether the post office attempted delivery at the correct address. Ms. Decker was unaware of the letter and continued to properly report her absences on a daily basis until she was released to return to work. Ms. Decker contacted the employer's human resources department when she learned that her position had been put out for bid and then learned that she had been discharged from the employment on April 14, 2006.

## **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Ms. Decker was discharged for misconduct in connection with the employment. It does not.

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 Ms. Decker's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the evidence must establish that her *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).

The evidence in the record establishes that Ms. Decker's absences were all for illness properly reported to the employer. The evidence in the record fails to establish a current act of misconduct that would disqualify Ms. Decker for benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Decker was discharged for no disqualifying reason. Accordingly, Ms. Decker is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Decker.

Ms. Decker's testimony at the hearing raises the issue of whether she has been able and available for work since establishing her claim for benefits. This matter will be remanded so that the issue may be addressed by a claims representative.

**DECISION:**

The Agency representative's August 30, 2006, reference 01, decision is affirmed. 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.

**REMAND:**

This matter is remanded for determination of whether the claimant has been able and available for work since establishing her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw