

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SHAYNE D PIPHO**  
Claimant

**GMT CORPORATION**  
Employer

**APPEAL NO. 19A-UI-08571-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/17/19**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 25, 2019, reference 02, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on September 27, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on November 22, 2019. Claimant Shayne Piphos did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Jamie Kramer, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects that no benefits have been disbursed to the claimant in connection with the March 27, 2019 original claim or the September 29, 2019 additional claim. Exhibits 1 and 2 were received into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Shayne Piphos was employed by GMT Corporation as a full-time CNC machinist from May 28, 2019 until September 27, 2019, when Darrell McLaury, Production Manager, discharged him from the employment. Production Supervisors Travis Woodward and Jeff Jacobs were Mr. Piphos's immediate supervisors. Mr. Piphos was assigned to the overnight shift. His work hours were 10:00 p.m. to 6:00 a.m. His work week began on Sunday evening and ended on Friday morning. The employer's decision to discharge Mr. Piphos was triggered by a September 27, 2019 absence and by the employer's alleged discovery on that same day that Mr. Piphos and other CNC operators had milled defective parts during the September 25-26 overnight shift. Mr. Piphos had no prior reprimands for defective work or for failure to quality check parts. The

final absence that factored in the discharge was an absence due to illness, was properly reported to the employer, and was supported by a medical excuse.

The employer considered many earlier absences when making the decision to discharge Mr. Pipho from the employment. Mr. Pipho's mother had passed away on June 6, 2019. That event factored heavily in Mr. Pipho's subsequent mental health and contributed to many of the absences that factored in the discharge. Mr. Pipho was absent due to mental health issues and with proper notice to the employer 13 times between June 20, 2019 and August 20, 2019. On August 21, 2019, Mr. Pipho properly reported an absence due to mental health issues, but then was spotted in a bar that same evening. When Jamie Kramer, Human Resources Manager, confronted Mr. Pipho about the incident, Mr. Pipho confirmed that he had been at the bar on August 21. Mr. Pipho told the employer he had an uncontrolled alcohol abuse issue and that he was using alcohol to cope with the loss of his mother. Mr. Pipho had been late for personal reasons on May 28, 2019 and on September 24, 2019. The employer had terminated the employment on August 21, 2019 due to attendance, but reinstated Mr. Pipho to the employment on August 26, 2019.

#### **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 discharge for no disqualifying reason. The employer presented insufficient evidence to prove, by a preponderance of the evidence, that Mr. Pipho carelessly and/or negligently milled defective parts on the September 25-26, 2019 overnight shift. Even if the evidence had been sufficient to prove carelessness and/or negligence during the September 25-26 shift, that single episode would be insufficient to establish a pattern of carelessness and/or negligence indicating a willful and wanton disregard of the employer's interests. The final absence that triggered the discharge was due to illness, was properly reported to the employer, and was therefore an excused absence under the applicable law. Because the final absence that triggered the discharge was an excused absence under the applicable law, the administrative law judge need not further consider the earlier absences and whether they were excused or unexcused under the applicable law. Mr. Pipho is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

**DECISION:**

The October 25, 2019, reference 02, decision is affirmed. The claimant was discharged on September 27, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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