IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

TYLER J LANSING
Claimant

CNH AMERICA LLC
Employer

APPEAL NO. 19A-UI-04866-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/29/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 5, 2019, reference 02, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 15, 2019 for violation of a known company rule. An appeal hearing was scheduled for 11:00 a.m. on July 11, 2019 and notice of the hearing was mailed to the parties on June 19, 2019. Neither party registered a telephone number for the hearing. Neither party participated in the hearing. The administrative law judge concludes that entry of default decision would be a miscarriage of justice and enters the following decision based on the Agency's administrative file materials submitted for and created in connection the May 31, 2019 fact-finding interview.

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: Tyler Lansing was employed by CNH America, L.L.C. as a full-time assembler from 2013 until May15, 2019, when the employer discharged him for attendance. The employer discharged Mr. Lansing after concluding that Mr. Lansing had exceeded the allowable number of attendance points. The employer's attendance policy assigned attendance points to absences, including absences due to illness and properly reported to the employer. The final absence that triggered the discharge occurred on May 15, 2019, when Mr. Lansing was late for work by a matter of minutes. Mr. Lansing had not complied the employer's absence reporting policy, which required that he call the workplace at least 30 minutes prior to the scheduled start of his shift if he needed to be absent. The employer considered prior absences in making the decision to discharge Mr. Lansing from the employment. Many of the absences that factored in the discharge were due to illness and were properly reported to the employer. Prior to the final absence on May 15, 2019, the next most recent absence that factored in the employment occurred on January 8, 2019, when Mr. Lansing was absent due to illness and properly reported the absence to the employer. Prior to the May 15, 2019 late arrival, the next most recent absent that was due to something other than an absence due illness and properly reported to the employer was an absence on October 2, 2018 that was due to illness but reported to the employer less than 30 minutes prior to the scheduled start of the shift. Prior to that absence, one has to go back to July 12, 2018 to find another absence for something other than illness properly reported to the employer.

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 administrative file establishes a discharge for no disqualifying reason. The late arrival on May 15, 2019 was an unexcused absence under the applicable law due, at least, to the failure to provide at least 30 minutes notice to the employer. All of the absences that were due to illness and properly reported to the employer were excused absences under the applicable law and cannot be considered against Mr. Lansing when determining his unemployment insurance benefit eligibility. Prior to the May 15, 2019 unexcused absence the next most recent absence that could be deemed an unexcused absence under the applicable law occurred on October 2, 2018, when Mr. Lansing was absent due to illness, but without proper notice to the employer. The time-span between the final unexcused absence and the next most recent unexcused absence was seven months. Such circumstances do not support a conclusion that the claimant's unexcused absences were excessive. Mr. Lansing is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The June 5, 2019, reference 02, decision is reversed. The claimant was discharged on May 15, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs