

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANJENETTE LARSON
943 – 74TH ST UNIT 5
CEDAR RAPIDS IA 52402

TOYOTA MOTOR CREDIT CORP
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 05A-UI-11643-JTT
OC: 10/16/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant Anjenette Larson filed a timely appeal from the November 3, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 1, 2005. Ms. Larson participated. Human Resources Generalist Jodie Driscoll represented the employer and presented additional testimony through Collections Customer Service Team Leader Jeff Corpora.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Anjenette Larson was employed by Toyota Motor Credit Corporation as a full-time collections customer service representative from October 25, 1999 until October 19, 2005, when Collections Manager Dan McGovern, Human Resources Manager Vicki Doyle and Collections Team

Leader Jeff Corpora discharged her for misconduct. Ms. Larson was discharged for repeatedly violating the employer's policy regarding sending personal e-mail messages at work. Ms. Larson was well aware of the employer's policy prohibiting excessive personal e-mail during working hours and was made aware of the policy through several different means.

The final e-mail violation that prompted the discharge came to the employer's attention on October 10, 2005. The most recent personal e-mail communication occurred on October 7, 2005. The October 7 e-mail message came to Mr. Corpora's attention when he reviewed Ms. Larson's e-mail usage for the period of August 11 through October 10. Ms. Larson had received prior verbal and/or written warnings for violation the employer's policy regarding personal e-mail. Ms. Larson readily admits that her personal e-mail messages were excessive in number. The employer did not offer any copies of e-mail messages into evidence and was unable to provide details of the prohibited correspondence. Though Mr. Corpora reviewed was aware of Ms. Larson's most recent prohibited e-mail on October 10, the employer did not notify Ms. Larson that the conduct subjected her to discharge until October 18, at the time of discharge.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Larson was discharged for misconduct in connection with the employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, 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 to 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). The important dates for determining whether the most recent conduct constituted a "current act" are the date on which the employer learned of the conduct and the date on which the employee learned that the final conduct subjected her to discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Regarding the behavior that came to the employer's attention on October 10, the evidence in the record indicates that Ms. Larson deliberately violated and/or disregarded standards of behavior that the employer had the right to expect of her. Ms. Larson made a habit of disregarding the employer's policy regarding personal e-mail despite repeated warnings that the behavior was unacceptable. Thus, the administrative law judge concludes that Ms. Larson was discharged for misconduct. However, there was an eight-day delay between October 10, the date on which the final conduct came to the attention of Mr. Corpora, and October 18, the date on which the employer advised Ms. Larson the conduct subjected her to discharge. Because of this delay, the conduct that prompted the discharge was no longer a "current act" of misconduct and cannot serve as a basis for disqualifying Ms. Larson for benefits. See Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988) and 871 IAC 24.32(8).

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

DECISION:

The Agency representative's decision dated November 3, 2005, reference 01, 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.

jt/tjc