

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTOPHER D MEUNIER
Claimant

APPEAL NO. 18A-UI-05960-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 04/22/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Christopher Meunier filed a timely appeal from the May 21, 2018, reference 02, decision that disqualified him for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Meunier was discharged on April 18, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on June 15, 2018. Mr. Meunier participated. Marylan Schenk of Employer Solutions Group represented the employer and presented testimony through Joy Hoagland. The hearing in this matter was consolidated with the hearing in Appeal Number 18A--UI—05961-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Mr. Meunier (DBRO).

ISSUE:

Whether Mr. Meunier was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits and that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christopher Meunier was employed by Focus Services, L.L.C. as a full-time telephone customer service representative from May 2017 until April 18, 2018, when Joy Hoagland, Director, discharged him from the employment. Mr. Meunier is a recent high school graduate. Mr. Meunier's work hours were 10:00 a.m. to 6:00 p.m., Monday through Friday. Mr. Meunier worked in the customer retention department. The essence of the work was dealing with upset customers to address their concerns in the hope of retaining their business. The employer provided Mr. Meunier with training at the start of the employment that included training in de-escalating interactions. Mr. Meunier's supervisor toward the end of the employment was Brihanne Wolf, Workforce Manager.

The final incident that triggered the discharge concerned a telephone call that Mr. Meunier handled on April 18, 2018. Ms. Wolf monitored the call. During the call, Mr. Meunier tried unsuccessfully to get the customer to provide account verification information so that Mr. Meunier could address the customer's concerns with account. The customer was upset for

the duration of the call. During the call, Mr. Meunier allowed the customer's distemper to get the best of him. During the 10 to 15-minute call, Mr. Meunier told the customer, at different points, "stop interrupting me," "do not interrupt me," and "I will not allow you to interrupt me." The customer continued to be uncooperative with providing the account verification information and eventually hung up on Mr. Meunier after calling Mr. Meunier an asshole. Though the call was a recorded call, the employer did not preserve the call record and it is no longer available. Ms. Wolf and Ms. Hoagland met with Mr. Meunier following the call. During that meeting, Mr. Meunier conceded that the customer was making him mad. The employer advised Mr. Meunier that his handling of the call constituted customer mistreatment in violation of the employer's policy.

The employer's decision to discharge Mr. Meunier from the employment followed earlier concerns dating back to September 2017. The employer had no concerns about Mr. Meunier's work performance from the start of the employment through September 7, 2017. On September 8, 2017, the employer counseled Mr. Meunier regarding his handling of a call after the customer requested to speak with a supervisor and complained about Mr. Meunier. The employer reviewed the call and determined that Mr. Meunier had unnecessarily put the customer on hold and that Mr. Meunier had used an inappropriate tone during the call. On December 22, 2017, the employer counseled Mr. Meunier for using a non-professional tone during a telephone call. On January 8, 2018, the employer counseled Mr. Meunier for unnecessarily placing a customer on hold. On January 17, 2018, the employer issued a last chance/final warning to Mr. Meunier for unnecessarily placing a customer on hold for an extended period. The employer advised Mr. Meunier that if there were other similar incidents, his employment would be terminated. There were no further concerns until the call on April 18, 2018 that triggered the discharge.

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). 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).

The weight of the evidence in the record establishes occasional work performance coaching concerns, but fails to establish conduct, when considered in proper context, that rises to the level of willful and substantial disregard of the employer's interests such as would disqualify Mr. Meunier for unemployment insurance benefits. The parties agree that the essence of Mr. Meunier's duties was dealing with angry, upset customers over the telephone in attempt to dissuade those same angry, upset customers from jettisoning the employer's product or service. Mr. Meunier is a very young man, who just recently graduated from high school. Though Mr. Meunier received appropriate training at the start of the employment, and generally performed his duties in a satisfactory manner, he occasionally fell short of the employer's expectations when handling a call. This is what happened when Mr. Meunier let the irate, uncooperative customer get the best of him on April 18, 2018. In this case, context is especially important. The employer's failure to preserve the call prevents the administrative law judge from fully exploring the context of the call. The evidence in the record establishes that prior to this difficult, unsuccessful interaction on April 18, 2018, Mr. Meunier had performed his difficult duties in a satisfactory manner on a full-time basis for three months. Given the nature of the work, that is a rather remarkable record. Mr. Meunier's lapse of judgment in connection with the April 18 telephone call, the utterance that the employer characterizes as rudeness, does not rise to the level of disqualifying misconduct. Nor does that call and prior occasional concerns establish a pattern indicating willful and substantial disregard of the employer's interests.

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

DECISION:

The May 21, 2018, reference 02, decision is reversed. The claimant was discharged on April 18, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs