

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY L HILL
Claimant

APPEAL NO. 10A-UI-10698-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALERIS INC
Employer

OC: 08/09/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 30, 2010, reference 10, decision that denied benefits. After due notice was issued, a hearing was held on October 12, 2010. Claimant participated. Heidi Broderson represented the employer and presented additional testimony through Sarah Baker. Exhibits 10, 11, 12, and A were received into evidence.

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: Ashley Hill was employed by Caleris, Inc., as a full-time inbound Internet tech support representative from January 2010 until July 2, 2010, when Sarah Baker, manager, and Heidi Broderson, human resources supervisor, discharged her from the employment. Ms. Hill's immediate supervisor was Brian Springer. The essence of Ms. Hill's duties was assisting customers with troubleshooting and resolving issues they encountered with their Internet use. The employer provided this Internet tech support service to its client Iowa Telecom and that company's Internet customers.

The final incident that triggered the discharge occurred on July 2, 2010, when Ms. Hill hung up on an Iowa Telecom customer under the pretext that the customer was being abusive. The customer, a pastor, had expressed frustration with his Internet set-up but at no time had employed profanity or was otherwise abusive. Rather than seeking the assistance of a supervisor, Ms. Hill simply hung up on the customer. This action was in violation of the employer's policies, including policy pertaining to abusive callers. Had the caller been abusive, Ms. Hill did not follow the steps set out in the abusive caller script.

In making the decision to discharge Ms. Hill from the employment, the employer also considered three prior incidents. On June 1, Ms. Hill transferred at customer to a different area without telling the customer she was going to do that, in violation of the employer's established protocol.

The employer issued a warning to Ms. Hill. On June 11, Ms. Hill transferred at customer without telling the customer she was doing that and failed to do anything to assist the customer with troubleshooting their Internet problem. At that time, the employer warned Ms. Hill that her employment was in jeopardy. On June 14, Ms. Hill again transferred a customer to another area without letting him know she was doing that. In addition, Ms. Hill documented that she had assisted the customer with troubleshooting the customer's problem when she had in fact not done that. The employer issued another reprimand for transferring the customer and also for falsification of employer document.

In addition to the above incidents, the employer had also noted Ms. Hill playing solitaire on her computer and chatting with her husband via the computer. Ms. Hill's husband also worked for the employer.

Ms. Hill had received proper training so that she could perform the assigned work duties.

REASONING AND CONCLUSIONS OF LAW:

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).

The weight of the evidence in the record establishes misconduct in connection with the employment that disqualifies Ms. Hill for unemployment insurance benefits. The evidence indicates that on four occasions between June 1 and July 2, 2010, Ms. Hill knowingly violated the employer's established protocol with regard to handling customer calls and documenting those calls. Ms. Hill received repeated warnings, but continued with similar conduct. Ms. Hill is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hill.

DECISION:

The Agency representative's July 30, 2010, reference 10, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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