

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIE J DECORA
Claimant

APPEAL NO. 13A-UI-06021-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/21/13
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 May 8, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 28, 2013. Claimant participated. Sharon Robertson represented the employer and presented additional testimony through Laura Karman. Exhibits One through Twelve 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: Jennie Decora was employed by Stream International, Inc., as a full-time customer support professional from 2011 until April 20, 2013, when Sharon Robertson, Senior Human Resources Generalist, and Laura Karman, Senior Team Manager, discharged from the employment for failing to save notes to accounts she had accessed. Ms. Decora was assigned to the Xbox account. Ms. Decora's immediate supervisor was Team Manager Heather Bronkhorst. Ms. Decora's duties involved taking inbound calls from customers who were having difficulty with accessing the Xbox service due to payment or billing issues. Ms. Decora would use her computer as she assisted the Xbox customer and was supposed to type a brief memo into the account information of any customer she assisted. The client business considered any transaction entry that did not have such a memo attached to the account to be an instance of suspected fraud. Stream International likewise assumed any transaction without a note attached was indication of fraud.

The final instance of Ms. Decora assisting a customer without saving a memo to the account occurred on April 11, 2013. On that day, Ms. Decora added promotional points to the account. There was no memo attached to the account to indicate why Ms. Decora had added the promotional points. The client business brought the matter to the attention of Stream International on April 18, 2013. On April 20, Ms. Bronkhorst, Ms. Robertson and Ms. Karman met with Ms. Decora about the lack of documentation for the April 11 transaction. At that time,

Ms. Decora indicated she had indeed accessed the account in question, remembered talking to the customer, but added that she was having problems with the software at the time and could not get her notes to save. Ms. Decora had not reported the problem to a supervisor.

The next most recent incident that factored in the discharge occurred on February 15, 2013 and came to the employer's attention on February 26, when the client business asked the employer to investigate. In that instance, Ms. Decora had modified a payment instruction to add or remove a credit card to the account. Ms. Decora asserted she was again having problems with the software and had sent a message by an alternative means to document the transaction. There were two earlier similar incidents on November 12, 2012 and December 13, 2012.

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) alone. 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 fails to establish misconduct in connection with the employment. The weight of the evidence indicates that Ms. Decora was, at worst, careless or negligent in handling four transactions out of many transactions over the course an approximate five-month period. However, the evidence is not sufficient to establish that Ms. Decora was the issue, rather than the software program she used to perform her work. The evidence fails to establish an intentional act indicating willful or wanton disregard of the employer's interests or a pattern of careless or negligence indicating similar disregard.

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

DECISION:

The Agency representative's May 8, 2013, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css