

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLE D CAMERON
Claimant

APPEAL NO. 15A-UI-05294-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/05/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Gayle Cameron filed a timely appeal from the April 22, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had been discharged on April 9, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on June 10, 2015. Ms. Cameron participated. Staci Albert represented the employer and presented additional testimony through Chris Agee, Valerie Peterson, and Matt Determan. Exhibits One through Six and A through D 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: Gayle Cameron was employed by Stream International, Inc., as a full-time customer support associate from 2007 and April 9, 2015, when the employer discharged her from the employment. Ms. Cameron's work duties involved handling inbound customer service, technical support, and billing calls from Microsoft X-box customers. Ms. Cameron handled 30 to 50 such calls each day.

The employer discharged Ms. Cameron from the employment for having multiple instances in which Ms. Cameron did not create an SR note when accessing an X-box customer's account. Ms. Cameron had received appropriate training and was well aware that she was required to leave an "SR note" any time she accessed an X-box customer's account. The requirement was in place so that Microsoft and Stream could readily discern the purpose of the customer's call, the purpose in accessing the customer's account, and what action was taken on the account. The requirement of leaving an SR note also existed to prevent track fraud in connection with access to the accounts. Regardless of whether Ms. Cameron left an SR note, Microsoft was able to track which Stream employee accessed the customer account. Microsoft monitored such access and regularly communicated with Stream regarding transactions that Microsoft

wanted Stream to investigate. Microsoft presumed a nefarious purpose in accessing the account when there was no SR note. If there was no SR note, Stream personnel would then look to see whether there was a record of communication from the employee who accessed the account to a supervisor or other Stream personnel to explain why no SR note was left. Stream management expected agents to promptly communicate any account access problems via an email indicating the game tag or customer's name. If it was not possible to send an email, the employer expected the agent to otherwise promptly contact a supervisor. Ms. Cameron was aware of these reporting requirements.

Stream International experienced intermittent problems with the customer service software system that agents had to use while assisting X-box customers. The system would at times freeze up. In most such instances, the agent would still have email access and could alert the employer to issues regarding access to a particular customer account. Employees are not allowed to have paper or a writing instrument at their computer work stations to assist in documenting issues.

The final incident that prompted the employer to discharge Ms. Cameron from the employment concerned Ms. Cameron's access to a customer's account on the afternoon of March 31, 2015. The problem came to the attention of Stream on April 8 or 9, when Microsoft requested that Stream investigate Ms. Cameron's access to the account. Earlier in the day and during that afternoon, Ms. Cameron and other agents had been experiencing problems with the software system. Ms. Cameron was only able to handle a couple calls upon her return from lunch before the system froze on her and she was unable to leave an SR note. Ms. Cameron was unable to access the game tag or the customer name. Ms. Cameron did not send an email message to the employer that day regarding her inability to leave an SR note. Ms. Cameron was not again scheduled to work at her computer until April 7, 2015. On that day, Ms. Cameron sent an email to the employer referencing problems she was having with the software system on March 31. Ms. Cameron did not have and did not include game tag or customer name because she did not have access to that information.

On April 9, the employer met with Ms. Cameron to discuss her failure to leave an SR note or send an email message to the employer on March 31, with game tag or customer's name, explaining why she was had not left an SR note. Because Ms. Cameron had prior instances wherein she had not left a SR note, the employer moved forward with discharging her from the employment.

The next most recent incident that factored in the discharge concerned Ms. Cameron's access to a customer's account on February 3, 2015. In that instance, Ms. Cameron updated account information without leaving an SR note. The employer spoke with Ms. Cameron about the matter on February 26, 2015 and issued a written reprimand.

The next most recent incident that factored in the discharge concerned Ms. Cameron's access to a customer's account on January 9, 2015. In that instance, Ms. Cameron "modified a payment instrument, modified a subscription, and offset a line item" without leaving an SR note. The employer spoke to Ms. Cameron about the matter on February 3 and issued a written reprimand.

In all, Ms. Cameron had four instances in 2015 wherein she failed to leave an SR note in connection with accessing a customer's account.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 evidence in the record fails to establish misconduct in connection with the employment. The weight of the evidence establishes mitigating factors in connection with the final incident that triggered the discharge. Regardless of whether Ms. Cameron had promptly sent an email to the employer about her inability to leave an SR note at the time the software froze on March 31, 2015, the employer, including her acting supervisor, was aware of the computer issues that day. Ms. Cameron might have been able to get the game tag or customer's name from the customer if the customer had still been on the phone at the time the software froze. Ms. Cameron belatedly provided information to the employer concerning the problem she had encountered on March 31, 2015 and, through that delay, was negligent in her handling of the matter. Ms. Cameron handled 30 to 50 customer calls per day. It is remarkable with that call volume that Ms. Cameron only made four documentation errors in 2015. While Ms. Cameron was either careless or negligent in her handling of those isolated matters, the evidence fails to establish any intentional violation of the employer's policies or a pattern of carelessness and/or negligent sufficient to indicate a willful and wanton 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 the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 22, 2015, reference 01, decision 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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