

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMMERLING, SHAWN, M**  
Claimant

**APPEAL NO. 12A-UI-09596-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AFFINA LLC**  
Employer

**OC: 07/15/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Shawn Emmerling filed a timely appeal from the August 3, 2012, reference 02 decision that denied benefits. After due notice was issued, a hearing was held on September 18, 2012. Ms. Emmerling participated. Rhonda Hall, Senior Human Resources Representative, represented the employer and presented additional testimony through Georgene Mills, Director of Operations, and Nicole Malone, Temporary Team Lead/Lead Operator. Exhibit One, a compact disc containing video surveillance, was received into evidence.

**ISSUE:**

Whether Ms. Emmerling 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: The employer operates an inbound customer service contact center. Shawn Emmerling was employed by Affina, L.L.C., as a full-time customer service representative from 2010 until June 18, 2012, when Rhonda Hall, Senior Human Resources Representative, and Georgene Mills, Director of Operations, discharged her from the employment.

On Friday, June 15, 2012, Ms. Emmerling rifled through confidential paperwork on the desk of Nicole Malone, Temporary Team Lead, to find a monitoring form that Ms. Malone had prepared and reviewed with Ms. Emmerling earlier in the week. The monitoring form concerned a telephone call that Ms. Emmerling had mishandled. Ms. Emmerling had scored a zero on the call. At the time Ms. Malone reviewed the monitoring form with Ms. Emmerling, Ms. Emmerling had refused to sign the form. Ms. Malone had placed the monitoring form with other similar materials in a folder on her desk so that she could follow up with the appropriate report the next business day.

On June 18, Ms. Malone could not locate the monitoring form. Ms. Malone asked coworkers whether they had seen anyone around her desk and a coworker said that she had seen Ms. Emmerling at Ms. Malone's desk at the end of the day on Friday, June 15. The employer

reviewed surveillance video showed Ms. Emmerling thumbing through a three-ring binder containing confidential information concerning other employees. The surveillance video showed Ms. Emmerling thumbing through confidential material under the three-ring binder until she found the document she was after. The surveillance video showed Ms. Emmerling removing the document in question and then carefully replacing the materials on Ms. Malone's desk to cover her tracks.

*After* the employer discharged Ms. Emmerling from the employment, Ms. Emmerling asserted for the first time that she had placed a note on Ms. Malone's desk about some books she had loaned to Ms. Malone and that this was the document she had removed from Ms. Malone's desk. The statement was untrue.

### **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 evidence in the record establishes that Ms. Emmerling knowingly, intentionally, and knowing she was acting without authorization, sifted through confidential paperwork contained on Ms. Malone's desk until she found the monitoring form pertaining to her. Ms. Emmerling purposely removed the monitoring form in an attempt to prevent Ms. Malone and the employer from taking further action in connection with the mishandled telephone call. In other words, Ms. Emmerling knowingly and intentionally interfered with the employer's disciplinary process in an attempt to undermine that process as it pertained to her. Ms. Emmerling's action was in willful and wanton disregard of the employer's interest in maintaining confidentiality of employee disciplinary materials and wanton and willful disregard of the employer's right to monitor her work and follow-up accordingly. Ms. Emmerling's conduct was dishonest and undermined the employer's ability to trust her.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Emmerling was discharged for misconduct. Accordingly, Ms. Emmerling 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. Emmerling.

**DECISION:**

The Agency representative's August 3, 2012, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been 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

jet/css