

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICHOLAS A JENNINGS
Claimant

APPEAL NO. 20A-UI-11324-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GO DADDY SOFTWARE INC
Employer

OC: 06/14/20
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 September 4, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on June 14, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on November 5, 2020. Claimant participated. Shannon Reed represented the employer in presented additional testimony through Ray Reinhart. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 3, 6, 8, 10, and 14 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: the claimant was employed as a Hosting Support Consultant until June 14, 2020, when the employer discharged him from the employment for failing to meet customer availability metrics and in response to negative customer reviews. The employer required that the claimant be available to assist customers during 96% of his work day, excluding breaks. During the month of April 2020, the claimant was available 92.89% of the time. During the period of May 5, 2020 through June 4, 2020, the most recent reporting period, the claimant met the availability metrics by being available for customers 97.86% of the time. The customer review scoring system was skewed to interpret any score less than 9/10 to be a negative review. The claimant performed his work duties in good faith and to the best of his ability.

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).

The evidence in the record establishes a discharge based on the claimant's inability to perform to the employer's satisfaction despite a good faith effort. The claimant did indeed meet the employer's availability metrics during the final month of the employment. The claimant had limited control over how customers perceived their interaction with the claimant. The employer's scoring of the customer reviews was skewed to interpret as negative every interaction in which the customer was not highly satisfied. The evidence fails to establish misconduct in connection with the employment. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The September 4, 2020, reference 01, decision is affirmed. The claimant was discharged on June 14, 2020 for no disqualifying reason. Claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

January 5, 2021
Decision Dated and Mailed

jet/mh