

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARTA M HOLUB
80 ROBINWOOD DR
ROBINS IA 52328

TOYOTA MOTOR CREDIT CORP
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05998-HT
OC: 04/25/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Toyota Motor Credit Corporation (Toyota), filed an appeal from a decision dated May 17, 2004, reference 01. The decision allowed benefits to the claimant, Marta Holub. After due notice was issued a hearing was held by telephone conference call on June 22, 2004. The claimant participated on her own behalf. The employer participated by Human Resources Coordinator Craig LeBlanc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marta Holub was employed by Toyota from January 11, 1993 until April 29, 2004. She was a full-time customer retention advisor. She had done this job in 2002, but was reassigned due to lack of work. However, in December 2003, the claimant was re-trained for this position and began the duties after the training.

On or about April 15, 2004, the service excellence administrator notified the claimant's team leader of irregularities in some of the monitored calls. The claimant would leave a message on a voice mail and then listen to her message several times while doing "after call work." This resulted in other team members taking calls which she should have been taking, and also improved her statistics regarding the amount of time spent doing the after call work.

The team leader monitored listened to tape recordings of calls by the claimant from April 1 through 9, 2004. During that time, approximately 20 calls were placed by Ms. Holub where she left a message, then listened to it several times. The matter was referred to Supervisor Doug Pipolo who notified Human Resources Consultant Craig LeBlanc. Mr. LeBlanc also reviewed the tapes and met with the claimant, along with her supervisor, on April 15, 2004. One of the tapes was played for the claimant and she acknowledged listening to the message she had left for the customer several times. She maintained it was so she could listen for information in the message regarding "prompts" for the delivery of the message.

She was suspended with pay pending investigation and was notified her job might be in jeopardy. As required by policy, the matter was referred to the corporate human resources office and corporate legal counsel. On April 29, 2004, she was notified by Mr. Pipolo she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant acknowledged listening to messages she had left several times, while doing after call work. However, there is no evidence this was being done to deliberately manipulate her statistics. While the practice was certainly questionable in nature, the record contains no evidence as to why, after 11 years of employment without any other reprimands or disciplinary action, the employer simply did not warn her this practice was unacceptable rather than discharge her. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge cannot conclude the claimant's conduct was egregious enough to be considered substantial, job-related misconduct, or that her actions were a willful and deliberate attempt to defraud the employer in any way. Disqualification may not be imposed.

DECISION:

The representative's decision of May 17, 2004, reference 01, is affirmed. Marta Holub is qualified for benefits provided she is otherwise eligible.

bgh/kjf