

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUANE F FOSTER
Claimant

APPEAL NO. 08A-UI-08705-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOYOTA MOTOR CREDIT CORP
Employer

**OC: 08/24/08 R: 03
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 17, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 14, 2008. Claimant Duane Foster participated. Tracy Talyor of TALX UC eXpress represented the employer and presented testimony through Human Resources Generalist Jody Driscoll. Exhibits Two through Seven 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: Duane Foster was employed by Toyota Motor Credit Corporation as a full-time collections/customer service representative from August 14, 2006 until August 22, 2008, when the employer discharged him from the employment for an alleged violation of the employer's bereavement leave policy. Mr. Foster's immediate supervisor was Sarah Twiselton, Collections Team Leader. On August 1, 2008, Mr. Foster notified Ms. Twiselton that his grandfather had passed away and requested bereavement leave. Ms. Twiselton approved the absence. The employer had a bereavement leave policy that indicated employees were eligible for bereavement leave of up to one week in connection with the death of a grandparent or step-grandparent. In connection with the bereavement leave request, Mr. Foster was absent from work on August 1, 4 and 5, and returned to work on August 6, 2008.

During the absence, Mr. Foster had traveled to St. Paul, Minnesota to attend the memorial event held for the decedent, Leonard J. Anderson. Mr. Anderson had been Mr. Foster's step-grandfather when Mr. Foster's mother had been married to Mr. Anderson's son, Daniel Anderson. Mr. Foster's mother was with Daniel Anderson for about a decade, from the time that Mr. Foster was six until Mr. Foster was 15 or 16 years old. Mr. Foster's mother and Daniel Anderson separated approximately a decade ago, and Daniel Anderson passed away in 2001 or 2002. Mr. Foster's contact with his step-grandfather occurred when the Leonard Anderson

would travel from his home in Minnesota to visit Mr. Foster's family in the Waterloo area. Mr. Foster did not have involvement with other members of Daniel Anderson or Leonard Anderson's family. While Mr. Foster had been in Minnesota attending the memorial event for Leonard Anderson, he had obtained a program pamphlet for the event, but subsequently misplaced the pamphlet.

About a week after Mr. Foster returned to work, Ms. Twiselton sent Mr. Foster an e-mail message in which she requested that Mr. Foster provide proof that he had attended a funeral, or the equivalent, and proof of his relationship to the decedent. The employer's leave policy indicated that an employee may be asked to provide documentation to support the request for bereavement leave. The employer's policy did not specify what would constitute acceptable documentation. Mr. Foster attempted to locate the pamphlet he had obtained in St. Paul, but could not. Mr. Foster eventually located an on-line obituary that he downloaded from the St. Paul Star Tribune website and provided that to the employer. The employer then requested further proof of his relationship with Leonard Anderson, but Mr. Foster was unable to obtain documentation that would prove his relationship to his step-grandfather. Mr. Foster offered to have his mother speak with the employer, but the employer rejected a verbal offer of proof regarding the relationship between Mr. Foster and Leonard Anderson. The employer placed Mr. Foster on a paid administrative leave and then discharged Mr. Foster from the employment on August 22, 2008 for failing to provide satisfactory documentation of his relationship with the decedent.

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 greater weight of the evidence fails to establish misconduct in connection with the employment that would disqualify Mr. Foster for unemployment insurance benefits. The weight of the evidence indicates that the employer imposed a burden of proof on Mr. Foster that many reasonable persons would not be able to satisfy, that is, that he prove his relationship to a step-relative with whom he had limited contact more than a decade ago. The weight of the evidence indicates that Mr. Foster made a good faith request for bereavement leave under the employer's written policy and under a reasonable belief that he was eligible for the leave under the employer's policy. The weight of the evidence indicates that Mr. Foster used the approved leave for its intended purpose. The weight of the evidence indicates that Mr. Foster provided the employer with written documentation that the step-relative had passed away on August 1. Mr. Foster offered to provide proof of his relationship to the decedent through the person best positioned to explain the relationship, his mother, but the employer rejected that additional proof. The bereavement absences were excused absences under the applicable law and would not disqualify Mr. Foster for unemployment insurance benefits.

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

DECISION:

The Agency representative's September 17, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs