

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

TINA M COPPESS
105 HAMES ST SW
CEDAR RAPIDS IA 52404

TOYOTA MOTOR CREDIT CORP
C/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08350-JTT
OC: 07/10/05 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 for Misconduct

STATEMENT OF THE CASE:

Toyota Motor Credit Corporation filed a timely appeal from the August 4, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 30, 2005. Tina Coppess participated. Human Resources Manager Vicki Doyle represented the employer. Exhibits One through Five were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tina Coppess was employed by Toyota Motor Credit as a full-time collections customer service representative from August 26, 2002 until July 15, 2005, when Human Resources Manager Vicki Doyle and Collections Team Leader Kelli Gunter discharged her for misconduct.

Toyota tracks the amount of time the collections customer service representatives (CSRs) spend in actual telephone calls, the time the CSR spends working on the account after the telephone call has ended, the time the CSR spends away from his/her desk, and so forth. This information is processed to generate productivity and sales statistics. If the CSR indicates through the computer system that he or she is engaged in "After Call Work" (ACW), the computer system will divert telephone calls to other CSRs. If the CSR spends more than the allotted time in ACW status, the computer system will prompt the CSR to take another call or ask a supervisor for assistance. At the same time, the computer system will log the fact that the CSR spent more than the allotted time in ACW. The corporate office then submits a report to the CSR's immediate supervisor for further action. The individual CSR has the ability to reset the timer on his or her ACW status to prevent the system from logging an instance of excessive time spent on ACW status.

In response to concerns about employees misusing or manipulating the employer's computer system, Toyota issued a written policy statement that provided a list of behaviors the employer deemed abuse or misuse of the computer system. Included in the list was personal use of e-mail during working hours outside of breaks, leaving the workstation without following the appropriate procedure, going into ACW mode to avoid calls, inappropriate use of ACW, and manipulating any system to skew reporting individual or group results. Ms. Coppess signed her acknowledgement of the policy statement on May 16, 2003.

The final incident that prompted the employer to discharge Ms. Coppess occurred on June 30, 2005. On that date, Team Leaders Brenda Mills and Jeremy Gock allegedly observed Ms. Coppess reset her status on the employer's computer system so that for 13 minutes it appeared as if Ms. Coppess was engaged in legitimate "After Call Work" (ACW) when the employer concluded she was not. The team leaders also allegedly observed Ms. Coppess reset her ACW status to prevent the computer system from generating a report that Ms. Coppess had been on ACW status for an excessive amount of time.

On July 5, 2005, Ms. Doyle, Ms. Gunter, and Collections Manager Chris Brenner met with Ms. Coppess to discuss Ms. Coppess' behavior on June 30 and prior similar behavior dating back to May 3, 2005. The employer had concluded that on June 14, Ms. Coppess repeatedly set her status on the computer system to indicate she was engaged in ACW when she had, in fact, been making telephone calls regarding personal matters. On May 3, 2005, Ms. Gunter had verbally counseled Ms. Coppess regarding walking away from her workstation when she was logged in under ACW status. During the same meeting, Ms. Gunter brought to Ms. Coppess' attention that Ms. Coppess had been flagged by the computer system for spending an excessive amount of time in ACW status.

During the meeting on July 5, Ms. Coppess advised that she had, in fact, reset her ACW status on June 30 and on prior occasions, but had done so in response to the discussion with Ms. Gunter on May 3. What Ms. Coppess took from the May 3 meeting was that her immediate supervisor was not so much concerned with anything Ms. Coppess was doing, but was concerned about the reports she received from the National Manager that indicated the computer system had flagged her CSRs for excessive time on ACW. Since the meeting on May 3, Ms. Coppess had begun to purposely reset her ACW status if she knew she was nearing the end of the allotted ACW time so as to prevent the system from generating a report that her supervisor did not want to receive.

During the meeting on July 5, Ms. Coppess was advised that she was being placed on paid suspension pending further review of the matter. Ms. Coppess' immediate supervisors needed

to consult with their superiors before they could take further action. Though the meeting occurred and the paid suspension began on July 5, Ms. Coppess was not discharged until July 15. During the July 5 meeting, Ms. Coppess was advised that one of the possible outcomes of the further review process was termination, but that this was not a decision the immediate supervisors would make.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Coppess was discharged for misconduct in connection with his employment.

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).

Since the claimant was discharged, 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 to misconduct, a discharge her 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).

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 does not support a conclusion that Ms. Coppess was discharged for misconduct. The employer has failed to fulfill its burden of proving a final "current" incident of misconduct. The employer failed to present testimony from any individual with first hand information regarding the alleged final incident of misconduct. The employer failed to sufficiently corroborate the allegation of misconduct, though it was within the employer's power to present more direct and satisfactory evidence. Even if the evidence did support a finding of misconduct in connection with the June 30 incident, the evidence does not establish that such misconduct would rise to the level of substantial misconduct that would disqualify Ms. Coppess for benefits. The allegations regarding prior misconduct has similarly been insufficiently corroborated such that the evidence would not support a conclusion that Ms. Coppess demonstrated a pattern of carelessness or negligence that might rise to the level of misconduct.

Based on the evidence in the record and the applicable law, the administrative law judge concludes that Ms. Coppess was discharged for no disqualifying reason. Ms. Coppess is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Coppess.

DECISION:

The Agency representative's August 4, 2005, reference 01, decision is affirmed. 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 for benefits paid to the claimant.

jt/kjw