

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**APRIL D MILLER**  
Claimant

**APPEAL NO. 12A-UI-11069-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GMAC MORTGAGE LLC**  
Employer

**OC: 08/19/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 10, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 11, 2012. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: April Miller was employed by GMAC Mortgage LLC from June 20, 2011 until August 16, 2012 when she was discharged from employment. Ms. Miller was last employed as a full-time "single point of contact" employee and was paid by the hour. The claimant's job was to verbally contact individuals who were behind on their mortgage payments to assist them in avoiding foreclosure.

The claimant was discharged on August 16, 2012 based upon what the employer considered to be call avoidance on the part of the claimant. Ms. Miller followed a procedure that she believed was authorized and was engaged in by other telephone representatives at the same job responsibilities. Prior to being discharged the claimant had not been warned or counseled that the method that she was using was unacceptable to the company.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does 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.

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 insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the claimant testified under oath that she believed that the sheet that she was using was acceptable to the company and that it was being used by other individuals in her same job capacity without issue. The claimant had not been warned or counseled that the documentation procedure that she was using was unacceptable to the company. There being no evidence to the contrary, the administrative law judge must conclude that the employer has not sustained its burden of proof in establishing intentional job misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 10, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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