

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL S ONKEN
Claimant

APPEAL NO. 14A-UI-10541-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

OC: 09/07/14
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 October 2, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on October 23, 2014. Claimant Carol Onken participated. Michelle Hawkins of Equifax Workforce Solutions represented the employer and presented testimony through Christy Reis, Kerri Osterlund and Misty Thooft. Exhibits One through Nine were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and whether the claimant engaged in fraud or dishonesty in connection with the fact-finding interview.

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: Carol Onken was employed by American Home Shield Corporation as a full-time appliance purchasing associate until September 9, 2014, when the employer discharged her for having an average call length time that exceeded that of her peers. Ms. Onken's duties involved handling inbound calls from American Home Shield customers wishing to have appliances replaced. Ms. Onken would have to walk the customer through the process, field questions, attempt to upsell the customer, and place the customer's order. If Ms. Onken was unable to meet the customer's needs, she was expected to "escalate" the call to a supervisor. The employer ranked Ms. Onken and her peers according to the average length of call. Ms. Onken almost consistently fell within the lowest range of the ranking system when compared to her peers. Ms. Onken performed much better when measured of call quality and number of calls that needed to be escalated. During the last months of the employment, the employer issued

multiple reprimands to Ms. Onken concerning her average call length. Ms. Onken was receptive to the employer's suggests, which seem to center on speaking more quickly and avoiding repetitive statements. Ms. Onken is not a quick speaker. Ms. Onken was able at times to improve her average call length and was indeed decreasing her average call length during the last few months of the employment. This did not prevent Ms. Onken from remaining in the lowest range of the employer's ranking system when compared to how quickly her peers handled calls. Ms. Onken performed the work to the best of her ability, but was unable to satisfy the employer's expectation regarding the speed of call metric.

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.

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). 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 fails to establish any misconduct on the part of Ms. Onken. The evidence indicates instead that Ms. Onken performed her work in a conscientious manner, to the best of her ability, but was unable to satisfy the employer's expectation regarding the speed of call metric. In making the decision to discharge Ms. Onken from the employment, the employer elected to focus on a single metric that appears to have been a very incomplete measure of Ms. Onken's overall performance. The employer elected to discount that importance of Ms. Onken's competence in meeting customer needs. One can easily envision how peers might have been significantly quicker in handling calls by cutting corners, by otherwise handling calls in a substandard manner, and by unnecessarily escalating calls. In any event, Ms. Onken's lower ranking on the average length of call metric does not indicate any wanton or willful disregard of the employer's interests and was no misconduct in connection with the employment.

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

DECISION:

The claims deputy's October 2, 2014, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css