

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH SEATON**  
Claimant

**APPEAL NO. 08A-UI-05900-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TOYOTA MOTOR CREDIT CORP**  
Employer

**OC: 05/18/08 R: 03  
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(8) – Current Act Requirement

**STATEMENT OF THE CASE:**

Toyota Motor Credit Corporation filed a timely appeal from the June 16, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 14, 2008. Claimant Deborah Seaton participated. Human Resources Generalist Jodi Driscoll represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit Four into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant's discharge was based on a "current act."

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Deborah Seaton was employed by Toyota Motor Credit Corporation as a full-time collections customer service representative from August 14, 2006 until May 21, 2008, when the Collections Manager and the Center Manager discharged her. The discharge was based on Ms. Seaton's handling of customer calls on May 1, May 6, and May 12, as well as Ms. Seaton's taking time from her duties to read a company e-mail on May 12. The employer witness does not know when these incidents first came to the attention of the employer. The employer did not meet with Ms. Seaton to discuss the matters until May 19.

**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).

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).

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).

The evidence in the record fails to establish a "current act" upon which a disqualification for benefits must be based. The greater weight of the evidence indicates that the most recent incidents that factored into the discharge occurred a full week before the employer discussed

the matters with Ms. Seaton. The greater weight of the evidence indicates that the employer knew about the most recent incidents at the time they occurred, but delayed discussing the matters with Ms. Seaton. Because the evidence fails to establish a "current act," the administrative law judge concludes that Ms. Seaton was discharged for no disqualifying reason. Because there was no current act, the administrative law judge need not further consider whether the incidents involved misconduct. Ms. Seaton was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Seaton.

**DECISION:**

The Agency representative's June 16, 2008, 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/kjw