

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JOYCE A NIEBUHR**

Claimant

**APPEAL NO. 22A-UI-17627-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAFELITE SOLUTIONS LLC**

Employer

**OC: 09/04/22**

**Claimant: Respondent (1)**

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Iowa Code Section 96.5(2)(a) and (d) – Discharge

**STATEMENT OF THE CASE:**

On October 3, 2022, the employer filed a timely appeal from the September 23, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on September 10, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on October 26, 2022. Joyce Niebuhr (claimant) participated. Carrie Merrifield of Corporate Cost Control represented the employer and presented testimony through Annette Kohl. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 8 into evidence. 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, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Joyce Niebuhr (claimant) was employed by Safelite Solutions, L.L.C. as a full-time Customer Service Representative from July 2021 until September 2, 2022, when Annette Kohl, Contact Center Director, discharged her from the employment. The claimant duties involved handling inbound calls from insured individuals seeking assistance with glass damage claims. The claimant performed her duties from her home. The claimant's usual work hours were 8:30 a.m. to 5:00 p.m. on Monday, and 11:00 a.m. to 5:00 p.m. on Tuesday, Wednesday, Friday, and Saturday. The claimant handled an average of 60 calls a day. All of the calls handled by the claimant were recorded and archived with the employer's quality assurance department. During the Monday shift, the claimant would receive a 15-minute morning break and a 30-minute lunch break. During the other, shorter shifts, the claimant would receive a 15-minute break.

At the start of the employment, the employer provided the claimant an employee handbook that included a Contact Center Associate Conduct policy. The policy required the claimant adhere to “professional behavior standards.” Though the policy makes clear it applies to employees working in a “Contact Center” and is aimed at preserving civility in that context, the employer deemed the policy to apply also to remote workers.

The final incident that triggered the discharge concerned the claimant’s handling of an August 27 or 29, 2022 follow-up call from an insured individual who had made her initial claim with another customer service representative. The caller was unhappy with waiting for a September 3, 2022 scheduled repair appointment and unhappy with the risk of having her vehicle stolen in the meantime due to a broken window. The employer alleges the claimant engaged in unprofessional, demeaning behavior during the call that included raising her voice, sarcasm and profanity. The claimant denies the employer’s allegations and asserts that she attempted to assist the insured. During the call, the caller requested to speak with a supervisor. The claimant asserts the supervisor provided the caller the same information and guidance the claimant provided. The asserts the claimant made incriminating statements during a September 2 meeting at which Ms. Kohl and the claimant listened to the call. The claimant asserts the employer misstates and/or distorts the comments she made during the September 2, 2022 meeting.

The employer had issued earlier warnings to the claimant for alleged unprofessional conduct. The employer most recently such a warning in March 7, 2022 regarding a call the claimant handled on February 26, 2022. The employed elected to “waive” concerns it had in July 2022 regarding the claimant’s handling of two calls.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 Legislature recently codified the misconduct definition along with a list of types of disqualifying misconduct. See Iowa Code section 96.5(2)(d).

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 Iowa Admin. Code r.871 -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).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove a "current act" of misconduct by a preponderance of the evidence. The employer cites a recorded phone call from on or about August 29, 2022 as the conduct that triggered the discharge. The weight of the evidence indicates the call took place on August 27, 2022. Though the employer has the recorded phone call in its possession, the employer elected not to present the recorded call as evidence at the appeal hearing. In other words, the employer elected not to present the single most important and determinative piece of evidence. The employer presented insufficient evidence to rebut the claimant's testimony regarding the phone call in question and insufficient evidence to prove the claimant violated the employer's policy in connection with that call. The next most recent alleged policy violations, which the employer elected not to address with the claimant, date from July 2022. Neither the July 2022 concerns nor the earlier concerns constitute "current acts" for purposes of determining the claimant's eligibility for unemployment insurance benefits. Those earlier concerns cannot serve as a basis for disqualifying the claimant for benefits in the absence of proof of a "current act" of misconduct. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The September 23, 2022 (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.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

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James E. Timberland  
Administrative Law Judge

November 10, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.