

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TORI K WECK**  
Claimant

**APPEAL NO. 14A-UI-04641-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPEED CONNECT LLC**  
Employer

**OC: 07/14/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tori Weck filed a timely appeal from the April 28, 2014, reference 03, decision that disqualified her for benefits. After due notice was issued, a hearing was held on May 22, 2014. Ms. Weck participated. Anthony Jaboro represented the employer and presented additional testimony through Erin Macke.

**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: Tori Weck was employed by Speed Connect, L.L.C., as a full-time customer service representative (telemarketer) from 2012 until April 9, 2014, when the employer discharged her for attendance. Effective April 1, 2014, Ms. Weck's scheduled work hours were 8:30 a.m. to 5:30 p.m. Prior to that, the work hours had been 8:00 a.m. to 5:00 p.m. Erin Macke, Market Manager, was Ms. Weck's immediate supervisor.

The final absences that triggered the discharge occurred on April 7 and 8, 2014, when Ms. Weck was absent from work and failed to notify the employer. On or about April 4, 2014, Ms. Weck had traveled to Chicago with her boyfriend. Ms. Weck knew when she left for Chicago that she needed to appear for work on April 7. While Ms. Weck was in Chicago, her boyfriend's father was hospitalized for high blood pressure because he had not been taking his medicine. Ms. Weck elected to remain in Chicago, rather than report for work.

The next most recent incident that factored in the discharge occurred on April 1, 2014, when Ms. Weck closed the employer's office earlier without authorization. The office was to remain open until 5:30 p.m. Ms. Weck knew she was scheduled to work to that time and keep the office open until that time. Ms. Macke had left the office before 4:30 p.m. to attend a business meeting. Ms. Macke drove by the office at 5:15 p.m. and noted that the office was closed. The closed sign was posted and Ms. Weck's car was gone. Ms. Macke telephoned Ms. Weck.

During that call, Ms. Weck intentionally misrepresented to Ms. Macke that she was still at the office and planned to close the office at 5:30 p.m. When Ms. Macke told Ms. Weck she had just passed the office and saw that it was closed, Ms. Weck then asserted that she had left a few minutes earlier.

The next most recent absence that factored in the discharge occurred on March 31, 2014, when Ms. Weck was at least two hours late getting to work because she was arguing with her boyfriend.

The next most recent absence that factored in the discharge occurred on March 20, 2013, when Ms. Weck was absent from 11:30 a.m. to 3:30 or 4:00 p.m. without authorization, but claimed on her time sheet that she had worked her regular hours.

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

Iowa Code § 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).

In order for a claimant’s absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant’s *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer’s policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes misconduct in connection with the employment based on excessive unexcused absences as well as based on intentional dishonesty. Ms. Weck’s absences on April 7 and 8 were each unexcused absences and were alone sufficient to establish excessive unexcused absences. Ms. Weck had not notified the employer that she would be absent from either shift. Rather than report for work, Ms. Weck elected to remain to Chicago in connection with her boyfriend’s father’s routine hospitalization for non-compliance with blood pressure medication, a matter that did not concern Ms. Weck and that did not require Ms. Weck’s involvement. Ms. Weck’s early unauthorized departure from work on April 1 was also an unexcused absence. Ms. Weck was intentionally dishonest with the employer in connection with that absence and the intentional dishonesty by itself was sufficient to establish misconduct in connection with the employment. Ms. Weck’s late arrival on March 31 was an unexcused absence. Ms. Weck testified she was late because she was arguing with her boyfriend. The evidence does not indicate that Ms. Weck was being victimized by her boyfriend on that day. The evidence establishes an additional unexcused absence on March 20, when Ms. Weck left work for hours without authorization and then attempted to intentionally misrepresent her work hours to the employment when completing her time sheet for the day.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Weck was discharged for misconduct. Accordingly, Ms. Weck is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The claims deputy's April 28, 2014, reference 03, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs