

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARY A GRANSTROM
Claimant

APPEAL NO. 14A-UI-06305-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 05/04/14
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 June 9, 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 July 31, 2014. Claimant Cary Granstrom participated. Sharon Robertson represented the employer and presented additional testimony through Sara Hofer and Kari Lara. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits One through 27 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.

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: Cary Granstrom was employed by Stream International, Inc., as a full-time customer support professional assigned to the Microsoft Xbox account from August 2013 until May 1, 2014, when the employer discharged her for failing to consistently perform her duties to the employer's satisfaction. Ms. Granstrom handled inbound customer calls from Xbox customers. In connection with handling those calls, Ms. Granstrom was expected to paraphrase back to the customer what the customer had stated so as to confirm an accurate understanding of what the customer was trying to accomplish through the call. Ms. Granstrom was also expected to recap the discussion before ending the call. Ms. Granstrom had received five weeks of training at the start of the employment and knew that she was expected to paraphrase and recap. Despite her good faith efforts to address the customer's needs during phone calls, Ms. Granstrom sometimes forgot to paraphrase and/or recap. The most recent such incident for which the employer is able to provide meaningful information dates from April 8, 2014. On that date, another customer support professional, Kari Lara, listened to four of Ms. Granstrom's customer

phone calls. During the phone calls, Ms. Granstrom sometimes remembered to paraphrase and recap and sometimes did not. Ms. Lara met with Ms. Granstrom on the same day to discuss the issues with her handling of the calls. Ms. Granstrom listened in good faith and responded in good faith that she would work to rectify deficiencies in her handling of customer calls. Ms. Lara had a similar meeting with Ms. Granstrom on May 1, 2014 to discuss her handling of three phone calls on that day. Ms. Granstrom would handle from 10 to 20 customer phone calls per shift.

Ms. Granstrom demonstrated ongoing difficulty in meeting the employer's performance expectations with regard to paraphrasing and recapping. The employer regularly reminded Ms. Granstrom that her employment was in jeopardy. As of April 24, 2014, Ms. Granstrom was meeting the employer's performance expectations. Despite her ongoing effort to perform the duties to the best of her ability, the employer subsequently concluded that Ms. Granstrom was not performing to the employer's satisfaction despite indications on April 24 that she was and elected to end the employment on May 1, 2014.

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).

The employer has failed to present sufficient evidence to establish a current act of misconduct. The employer was unable to provide meaningful evidence concerning specific performance issues beyond April 8, 2014. The issues from that day came to the employer's attention that same day. Even if the evidence had established a current act of some sort, the evidence does not establish misconduct in connection with the employment that would disqualify Ms. Granstrom for benefits. The weight of the evidence indicates that Ms. Granstrom performed her duties in good faith to best of her ability, but had struggled to meet the employer's performance expectations throughout the employment. The evidence does not establish willful disregard of the employer's interests.

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

DECISION:

The claims deputy's June 9, 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/pjs