

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAZZ A HEARD
Claimant

AT&T MOBILITY SERVICES LLC
Employer

APPEAL NO. 20A-UI-06634-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
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 12, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on April 12, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on July 27, 2020. Claimant Jazz Heard participated. Tanis Minters of Equifax represented the employer and presented testimony through Quinton Scott. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits1 into evidence.

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: Jazz Heard was employed by AT&T Mobility Services, L.L.C. as a full-time telesales representative from 2018 until April 12, 2020, when the employer discharged him from the employment. Mr. Heard's duties involved handling inbound calls from customers seeking assistance with their account and using the opportunity to sell the customer additional products and services. Mr. Heard's work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. On February 4, 2020, Telesales Manager Quinton Scott became Mr. Heard's supervisor. Mr. Heard last performed work for the employer on February 23, 2020.

On February 10, 2020, a third-party quality control vendor notified the employer of a problematic phone call that Mr. Heard handled on January 31, 2020. A customer had called seeking a new phone. AT&T had a promotion in effect whereby a customer could get a discounted phone if the customer added a line to the customer's calling plan. Adding a line to the plan would include an additional \$55.00 monthly charge for the additional line. Under the employer's policies, a customer who did not want or need an additional line could still take advantage of the promotion if the customer kept the new line for three months. After three months, the customer could go

through the process of dropping the old line and keep the new line. The customer did not want an extra line. Under the employer's policies, Mr. Heard was required to disclose to the customer that the additional line would result in an additional monthly charge of \$55.00 unless and until the customer went through the process of dropping the old line of service and keeping the new one. Mr. Heard did not notify the customer of the additional charge. On February 17, 2020, Mr. Scott met with Mr. Heard and a union representative to discuss the problematic call. During the meeting, Mr. Heard acknowledged familiarity with the employer's code of conduct, but denied that he had done anything inappropriate in connection with the call in question. Mr. Heard continued to perform his regular duties until February 23, 2020. On February 23, Mr. Scott made the decision to discharge Mr. Heard from the employment. Before the discharge could be carried out, Mr. Scott was required to seek approval from the employer's legal department. The legal department approved the discharge on February 26, 2020.

Mr. Heard most recently performed work for the employer on February 23, 2020. Mr. Heard was thereafter off work on an approved medical leave of absence that was based on anxiety. Mr. Heard continued contact with the employer while he was off work. Mr. Heard returned on April 11, 2020. Mr. Heard returned to work on April 11, 2020 under the belief that the employer would that day provide him with equipment he would need to perform his duties from home. The employer had engaged in intentional subterfuge by directing Mr. Heard to report to work that day for the purpose of collecting equipment to use to perform work from home. The employer was in the process of transitioning employee to home-based work in light of COVID-19. The employer had said nothing to Mr. Heard up to that point to put him on notice that he faced possible discharge from the employment in connection with his handling of the January 31, 2020 call. The employer proceeded with discharging Mr. Heard from the employment on April 11, 2020.

In making the decision to discharge Mr. Heard from the employment, the employer considered a June 2019 incident wherein the employer alleges Mr. Heard used a rude and sarcastic tone when speaking with a customer.

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 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).

The evidence in the record establishes a discharge that was not based on a current act. The conduct that triggered the discharge occurred on January 31, 2020 and came to the employer's attention on February 10, 2020. On February 17, 2020, the employer spoke with the claimant regarding the matter but said nothing to indicate that the claimant faced possible discharge in connection with the incident. The claimant worked another week before he went off work due to a mental health issue. The employer had not said anything to the claimant about the employment being in jeopardy. The claimant was in contact with the employer during his leave of absence, but the employer continued to say nothing about his employment being in jeopardy. The employer continued to hide the employer's intention until April 11, 2020, at which time the employer discharged the claimant from the employment. The employer unreasonably delayed from the time it learned on February 10, 2020 of the offending conduct until April 11, 2020, when the employer notified the claimant that he could and would be discharged based on that conduct. Because the evidence fails to establish a current act of misconduct, the claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 12, 2020, reference 01, decision is affirmed. The claimant was discharged on April 11, 2020 for no disqualifying reason. The discharge was not based on a current act. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

September 8, 2020
Decision Dated and Mailed

jet/scn