

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEE L JONES
Claimant

APPEAL NO. 15A-UI-05413-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUSINESSSOLVER.COM, INC
Employer

OC: 04/05/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Ashlee Jones filed a timely appeal from the May 1, 2015, reference 03, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Jones had been discharged on April 8, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on June 15, 2015. Ms. Jones participated. Kim Barney represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-05414-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

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: Businesssolver.com, Inc., provides benefit enrollment services to business clients and their employees. Ashlee Jones was employed as a full-time participant service representative from October 2014 until April 8, 2015, when the employer discharged her from the employment. Ms. Jones' duties involved handling inbound calls from benefit program participants. All calls were recorded. Ms. Jones handled 40 to 50 calls per day. One quarter to one half of those calls involved a request for general information or a request for a contact number for a benefit provider. In connection with such calls, the employer did not require that Ms. Jones verify the identity of the caller or create a case note to document the issue addressed during the call. However, if a participant called with a specific inquiry about the participant's benefits, the employer required that Ms. Jones first verify the identity of the participant by obtaining the last four digits of the participant's Social Security number, the participant's date of birth, and the participant's address. Because such calls could involve discussion of confidential medical information, the employer required verification of the participant's identity to prevent HIPAA violations. The employer also required that Ms. Jones enter a case note for such calls to document the purpose of the call and the service or information she provided to the participant.

Ms. Jones had received proper training to perform her duties and assisted with training other employees on such matters.

The final alleged conduct that triggered the discharge occurred on April 7 and 8, 2015. On that day, Kim Barney, Assistant Vice President, listened to calls handled by Ms. Jones and concluded that Ms. Jones had failed to properly verify the participant's identification and/or failed to create and attach case notes in connection with each call. Ms. Barney reviewed other calls that Ms. Jones had handled over the preceding three months and detected a pattern of similar deficiencies. The employer did not document specific deficiencies concerning specific calls and, therefore, was unable at the time of the appeal hearing to speak to specific deficiencies on specific calls. The employer did not meet with Ms. Jones prior to discharging her from the employment to review any of the calls or to discuss specific deficiencies on specific calls. Ms. Jones believed she was performing her duties as trained. Ms. Jones had not received any prior discipline for mishandling participant calls. Ms. Jones had in fact been assigned to train a new coworker on April 7, 2015. The employer indicates that Ms. Jones' handling of the calls that came in while she was training the new coworker was satisfactory. Shortly before Ms. Jones was discharged from the employment, the employer's training personnel had approached Ms. Jones about becoming part of the training team and did so based on the their perception that Ms. Jones was adept at properly handling participant phone calls.

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.

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 presented insufficient evidence to establish misconduct in connection with the employment. At the time of the hearing, the employer could not address any specific deficiencies regarding any particular call and testified instead in terms of generalized deficiencies. Because each call was recorded, the employer had the ability to present any one of the recorded calls as evidence or to at least present a transcript with any appropriate redactions to remove confidential information. The administrative law judge notes that the HIPAA regulations provide a specific exception that allows presentation of confidential information in legal proceedings. The evidence in the record is remarkable for the absence of prior discipline, the absence of discussion with Ms. Jones of specific deficiencies regarding specific calls, and the employer's recent decision to consider Ms. Jones for a training position. Ms. Jones testified credibly regarding her belief that she was properly handling calls and her motivation as a single mother to act in a manner that would allow her to continue in the employment. The evidence in the record is insufficient to establish willful or wanton disregard of the employer's interests on the part of Ms. Jones.

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

DECISION:

The May 1, 2015, reference 03, decision is reversed. 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/css