

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHIRLEY M MASCHINO**

Claimant

**APPEAL NO. 14A-UI-03094-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHECK INTO CASH OF IOWA INC**

Employer

**OC: 02/09/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated March 12, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Council Bluffs, Iowa on May 7, 2014 at which time the claimant participated personally. The employer participated by Mr. Stuart Larimer, Hearing Representative and witnesses, Mr. Thomas Shartrand, District Manager and Ms. Brandi Shaw, Manager. Employer's Exhibits A, B, C, D, E and F were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Shirley Maschino was employed by Check Into Cash of Iowa, Inc. from June 25, 2012 until January 31, 2014 when she was discharged from employment. Ms. Maschino was employed as a full-time assistant manager in the company's Council Bluffs, Iowa, location and was paid by the hour. Her immediate supervisor was Brandi Shaw.

Ms. Maschino was discharged because of the statements that she made on January 29, 2014 while the company's district manager was training a new employee and because an audit at the claimant's work location on January 31, 2014 showed that Ms. Maschino was not following the company policy on collection and reference calls after being warned.

On January 29, 2014, the company's district manager was explaining the criteria to be used in determining whether a loan would be made to an applicant. Ms. Maschino stated in the presence of the new trainee that Ms. Maschino would "only go by her gut on who will pay us back and who won't." When the district manager stated that failing to follow policy would get an employee terminated, Ms. Maschino responded, "Like that will ever happen." The district manager considered Ms. Maschino's statements to be inappropriate and a detriment to the training of the new employee. An audit of the claimant's files showed that the claimant had not

contacted customers via telephone each day on a call list provided by the employer, although the claimant had sufficient working time to do so. Because Ms. Maschino had received previous warnings to follow company policy when determining whether or not to issue a loan and because the claimant had been warned both verbally and in writing to make loan-related calls each day, a decision was made to terminate Ms. Maschino from her employment.

It is the claimant's position that her statement made during the training of the new employee was meant only to reflect that she relied upon her personal expertise as a seasoned financial worker to determine whether or not a loan applicant would be likely to repay the loan. It is the claimant's further contention because of other duties, she did not have sufficient time to make the required loan or courtesy calls at the call level expected by the employer.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases the employer has the burden of proof in establishing disqualifying misconduct on the part of the claimant. 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 may not necessarily be serious enough to warrant the denial of unemployment insurance 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).

Ms. Maschino was discharged from her employment after she openly made statements while a new employee was being trained that contradicted the policy and training given to the new employee by the district manager. The claimant's statement also served to undermine the district manager's management authority. The evidence establishes that Ms. Maschino had been warned in the past that she must follow the employer's criteria in determining whether or not to grant a loan to an applicant. The claimant's conduct on January 29, 2014 also triggered a review of her work for the preceding week. The review showed that the claimant had not been making the required "courtesy calls" to individuals whose loan payments were due or overdue, although the claimant had sufficient to make a substantial number of the required calls that week. The claimant had previously been verbally warned on two occasions and had received a written warning on January 11, 2014 concerning the requirement that she make the required courtesy calls each day.

For these reasons the administrative law judge concludes that the employer has sustained its burden of proof in showing that Ms. Maschino's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated March 12, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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