

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L LUCAS

Claimant

APPEAL NO. 13A-UI-02879-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CHOICE CREDIT UNION

Employer

OC: 02/03/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 1, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 28, 2013. Claimant participated. Participating as a representative for the claimant was Mr. Saul Gonzalez. The employer participated by Ms. Judy Wills, Human Resource Manager; Mr. Casey Quick, Branch Manager; and Ms. Jennifer Howard, Branch Head Teller.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Debra Lucas was employed by Community Choice Credit Union from July 23, 2001 until February 4, 2013 when she was discharged from employment. Ms. Lucas was employed as a full-time teller and was paid by the hour. Her immediate supervisor was the head teller, Ms. Jennifer Howard.

Ms. Lucas was discharged on February 4, 2013 based upon the employer's reasonable belief that the claimant was jeopardizing the credit union's image to clients by alleging that the credit union was making staffing cuts and by her demeanor with other employees about a warning that had been served upon the claimant about the issue.

In the approximate two weeks preceding the claimant's discharge from employment, Community Choice Credit Union had received a number of inquiries from clients about the safety of their deposits, about the credit union downsizing and associated concerns related to "notes" that Ms. Lucas had been passing to consumers at her drive through teller station. The employer considered the complaints to be credible because they had come from various sources but had referenced Ms. Lucas as the source. The claimant had been downgraded on an evaluation that had been given on January 11, 2013 for lack of "cross-selling services" and had been told by the facility manager that she might be let go if her performance did not improve in the future. The employer had also emphasized that improved performance on the part of the claimant

would result in her continuing employment. Various employees had also reported to the branch manager that they had overheard Ms. Lucas making statements to consumers about her future with the organization. The employees felt that the claimant's comments were inappropriate and therefore reported them.

On January 22, 2013, Casey Quick the branch manager, met with Ms. Lucas to warn her about her conduct. The claimant was warned to discontinue writing notes or making statements to consumers about these issues and the branch manager explained that the claimant's conduct was having a negative effect on the credit union's image with its consumers. At the conclusion of the meeting Mr. Quick specifically warned Ms. Lucas not to question other employees about their involvement in the events that led to Ms. Lucas' warning that day.

Soon thereafter a number of employees complained to management that Ms. Lucas was questioning them about who had "told on her." One female employee specifically complained that Ms. Lucas had indicated that that employee was involved in informing the employer of the issues and that Ms. Lucas had referred to that female worker as a "bitch" in a telephone conversation to a third party that the employee was meant to overhear.

Because the claimant had been warned on numerous occasions in the past for unprofessional behavior with coworkers and had been specifically warned not to involve coworkers in the most recent disciplinary action that had been issued to her on January 22, 2013, the employer concluded that Ms. Lucas was willfully disregarding work-related instructions and a decision was made to terminate Ms. Lucas from her employment.

It is the claimant's position that the notes that she provided to consumers through the company's drive-in were only to provide consumers with her personal telephone number so that the consumers and Ms. Lucas could maintain contact if the claimant was discharged from employment.

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.

871 IAC 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.

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. 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).

In this matter the evidence in the record establishes that Ms. Lucas was discharged based upon her failure to follow a reasonable and work-related directive to cease making statements or writing notes to credit union members that were causing concerns to members about the stability of the credit union. The claimant was also given a reasonable and work-related directive at that time not to confront or question other workers about their involvement that led to the disciplinary action given to Ms. Lucas on January 22, 2013.

Based upon independent complaints from other workers after the January 22, 2013 warning, the employer reasonably concluded that Ms. Lucas was questioning other workers about their involvement in the events that led to the claimant's warning and that the claimant was making statements designed to make at least one of the female workers personally uncomfortable by referring to that worker as a "bitch" in a telephone conversation with a third party that was placed by the claimant in the close proximity of the other worker and designed for the other worker to overhear.

In this matter the employer's witnesses provided credible testimony not only of their own involvement in this matter but also testifying that the complaints about the notes and the claimant's questioning of other workers came from various and independent sources leading the employer to reasonably conclude that the complaints were valid. The administrative law judge also notes that Ms. Lucas had been the recipient of a number of previous warnings for unprofessional behavior with coworkers and notes that the claimant had been specifically warned on January 22, 2013 not to engage in that type of conduct following a warning that had been generated in part by employee complaints about Ms. Lucas. For these reasons the administrative law judge concludes that the employer has sustained its burden proof in this matter. The claimant's conduct in violating a reasonable work-related directive that had been given to her showed a disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 1, 2013, 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.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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