

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY DENISE TEMPLETON
Claimant

APPEAL NO. 09A-UI-06421-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMERS SAVINGS BANK
Employer

**Original Claim: 03/22/09
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated April 10, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 20, 2009. The claimant participated. The employer participated by Randy Walter, assistant vice president, and Cindy Arp, cashier and operations manager. The record consists of the testimony of Randy Walter, the testimony of Cindy Arp, and the testimony of Mary Denise Templeton.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with the individual's employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a customer service representative on August 13, 2007. The employer has two different locations where it does business. The main bank is located in Walford and a branch bank is located in Main Amana, Iowa. The claimant was initially assigned to the branch at Main Amana. The claimant's performance at the branch in Main Amana was not entirely satisfactory to the employer, and in order to provide additional training and supervision, the claimant was transferred to the main bank in June of 2008. The claimant was not happy with this transfer.

The claimant and another employee at the main bank had difficulty working with each other. The claimant felt that this other employee was given different treatment by the employer, especially concerning lunch breaks. She recorded a list of incidents that she believed were examples of how she was treated unfairly by the employer. The employer endeavored to mediate the dispute between the claimant and this other employee and eventually transferred the other employee to the Main Amana branch.

The claimant's work performance continued to fall below the employer's standards. She was given written warnings on September 2, 2008; January 12, 2009; and March 23, 2009. Among these work performance issues were an improper wire transaction and instances when her teller drawer did not balance. The final incident, which led to the claimant's termination on March 23, 2009, was throwing two customer deposits into the shred bin on March 5, 2009.

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.

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.

Misconduct that disqualifies an individual from unemployment benefits is specifically defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of such employee's contract of employment. It is the employer's burden of proof to show misconduct. In this case, the employer has failed to sustain that burden of proof.

The evidence did establish that the claimant did not perform her job in a satisfactory manner and failed to live up to the employer's reasonable expectations. The employer cited numerous instances where the claimant made errors in customer accounts and failed to follow bank procedures. The evidence does not show, however, that the claimant's job performance was so careless or negligent that there was an intentional and substantial disregard of the employer's interests or the claimant's duties and obligations to the employer. Rather, the claimant appears to have had the inability or incapacity to do the duties assigned to her.

DECISION:

The decision of the representative dated April 10, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw