

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD C SMITH

Claimant

APPEAL NO. 11A-UI-11682-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DATAVISION RESOURCES LLC

Employer

OC: 07/31/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 24, 2011, reference 01, that held he was discharged for misconduct on August 1, 2011, and which denied benefits. A telephone hearing was held on September 28, 2011. The claimant participated personally and was represented by Ted Wonio, attorney at law. Jodi Landrey, FMP manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time loan processor on December 15, 2008, and last worked for the employer on August 1, 2011. The claimant received an employee handbook, which contained the disciplinary policies of the employer.

The employer issued claimant a written warning for job performance and oversight on April 18, 2011. He was placed on a performance improvement plan with an admonition that a further occurrence could lead to employment dismissal.

Claimant processed a loan involving a client and Midwest Bank on June 23, 2011. He failed to create documents required by RESPA guidelines as to a good-faith estimate and truth in lending. He created those documents on July 22 and backdated these to make it appear that he had done so on June 23 when he closed the transaction on that date. Midwest Bank caught this issue and brought it to the employer's attention on July 29.

The employer investigated the matter and, after reviewing the claimant's actions and loan processing documents, concluded he backdated the documents from July 22 to June 23. Claimant's act caused the employer to reimburse the client more than \$5,000 due to a variance

in the interest rate. The employer discharged claimant on August 1 due to falsification of loan processing documents in light of the prior warning/performance improvement plan.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 1, 2011, for document falsification.

The claimant knew the employer loan's processing procedure, and his action of backdating loan processing documents in light of a prior warning constitutes job disqualifying misconduct. The claimant's act caused his employer a substantial financial loss. The employer offered credible testimony that is corroborated by its tracking system(s) that claimant did backdate the documents without having created the same documents at the time of the June 23 closing or within the three-day tolerance period to correct.

DECISION:

The department decision dated August 24, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on August 1, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw