

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARISSA A JOHNSTON**  
Claimant

**APPEAL NO: 11A-UI-09700-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US BANK NATIONAL ASSOCIATION**  
Employer

**OC: 05/22/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Charissa A. Johnston (claimant) appealed a representative's July 15, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with US Bank National Association (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2011. The claimant participated in the hearing. Stacy King appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 31, 2007. She previously worked full time as a universal banker in the employer's Burlington, Iowa location; as of November 1, 2011 she transferred to and worked in the employer's Gregory/Raytown, Missouri branch. Her last day of work was May 26, 2011. The employer discharged her on that date. The reason asserted for the discharge was notarizing a document not signed in front of her.

The branch manager had routinely required various universal bankers who were notaries, including the claimant, to notarize loan documents even though the signator was not signing the document before them. Some of the universal bankers had even allowed their notary commissions to expire because of this practice. The claimant's commission had not yet expired.

A customer booked and signed a loan document on May 13. On May 17 Ms. King, the district operations manager, was reviewing the form and saw it showed that the claimant had notarized the customer's signature on May 13. Ms. King knew that the claimant had been out of the office on May 13, and confronted the claimant. The claimant readily admitted that the customer had not signed it before her, and explained that the branch manager was requiring those universal

bankers who were notaries to do this. The branch manager was then discharged, but so was the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her notarizing the loan document without the signator signing before her. Under the circumstances of this case, the claimant's following the bank manager's instruction to do the wrong thing was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's July 15, 2011 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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