

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRETCHEN M WATSON
Claimant

APPEAL NO. 06A-UI-11166-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BANK OF AMERICA NA
Employer

OC: 10-22-06 R: 02
Claimant: Respondent (2)

Section 96.5-2-a- Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Bank of American NA filed an appeal from a representative's decision dated November 16, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on December 4, 2006. The claimant participated. The employer participated through Jennifer Gibson and Nancy Hollis. Exhibit One was received into evidence.

ISSUE:

At issue in this matter is whether Ms. Watson was separated from her employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds Ms. Watson was employed by Bank of American NA from August 31, 2004 until October 26, 2006 when she was discharged for violation of company policy. Ms. Watson held the position of personal banker and was paid by the hour.

Ms. Watson was discharged from her employment with the captioned banking institution based upon the results of an investigation. The investigation had been initiated by a complaint the claimant had misused the bank's customer referral program by paying bonuses that were unearned to bank customers for new clients that had not been referred. Bank of America investigated the allegations and determined that Ms. Watson had used her position to give referral fees in some instances to customers who had not brought in new checking customers as a required prerequisite for receiving referral bonuses. The bank's investigation showed bonus payments had been given to the complaining caller as well to Ms. Watson's parents. The employer's review showed that these individuals had not referred customers to the level reflected by the number of bonuses authorized to them by Ms. Watson.

As part of the employer's investigative process, Ms. Watson was interviewed. During the interview the claimant admitted to providing approximately 70 percent of the bonus stipends that she had authorized to only six customers and admitted that she had "chosen" to give unauthorized bonuses

although she knew the practice was “wrong.” Ms. Watson indicated that she had authorized bonuses because of the “value” of the customer to the bank.

Based upon what the employer reasonably considered to be a serious violation of the bank’s code of ethics and intentional misuse of the customer referral program, a decision was made to terminate Ms. Watson from her employment. It is the claimant’s position at the time of hearing that she provided no unauthorized bonuses to either the male customer who had complained, to her parents or any other individual. Ms. Watson maintains that the complaint was lodged by an abusive individual with whom she had a previous personal relationship as a form of retaliation. It is the claimant’s further position that she had been coerced and intimidated into making incriminating statements at the time she was interviewed by bank personnel.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case, the administrative law judge finds the employer has sustained its burden of proof in establishing that the claimant’s discharge took place under disqualifying conditions. Here, the evidence establishes that initial information regarding violation of the banking institution’s customer referral bonus program came to the attention of the bank from a male individual who previously had a relationship with the claimant. While there is little doubt that this person’s motivation may have been some form of retribution against the claimant, nonetheless, the bank was alerted to a potential serious violation of its customer referral bonus program and the bank’s code of ethics for employees. The allegation caused the bank to investigate and review numerous bonuses to customers that had been authorized by Ms. Watson. Under the program, bonuses were only payable to customers who had referred new checking customers to the bank. The employer’s investigation showed that the individual who had complained had received bonuses in excess of any customers that he had referred and the investigation showed that Ms. Watson’s parents had received a substantial portion of all bonuses that had been authorized by the claimant. The bank’s review showed that there had been no activity on the part of these parties which would make them eligible for a bonus to be authorized. As Gretchen Watson had authorized the bonuses, the bank was reasonable in its belief that she not only violated the bonus referral policies but had violated the bank’s code of ethics by intentionally providing remuneration to individuals who were not authorized.

In an effort to complete their investigation, the bank offered Ms. Watson an opportunity to not only be informed of the allegations but to provide any explanation or extenuating circumstances. The evidence establishes that during the interview Ms. Watson freely admitted to violating the company

policy. She admitted that she had chosen to issue a few refunds extra although she knew it was wrong and placed part of the blame on the individual she had previously had a relationship with. Because the evidence established that the claimant had not only violated bank referral policies and the bank's code of ethics and the claimant had freely admitted doing so, a decision was made to terminate Ms. Watson from her employment.

Although the administrative law judge is cognizant that Ms. Watson now denies any and all wrongdoing and asserts that her admissions were made solely because of "duress" at the time of the meeting, the administrative law judge finds that the claimant's position at the time of hearing strains credibility. For the above-stated reasons, the administrative law judge finds that the employer has sustained its burden of proof in establishing the claimant was discharged for intentional disqualifying misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$1,775.00 pursuant to Iowa Code section 96.3-7, as the disqualification decision has been entered.

DECISION:

The representative's decision dated November 16, 2006, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided that she satisfies all other conditions of eligibility. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,775.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw