

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JASON C CROOKS**  
Claimant

**AFFINITY CREDIT UNION**  
Employer

**APPEAL 17A-UI-06401-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 13, 2017, (reference 02) unemployment insurance decision that denied benefits based upon his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 11, 2017. The claimant participated and was represented by attorney Mason Ouderkirk. The employer participated through attorney Bridget Penick and witnesses Justin Williams and Christian Quijano. Also present on behalf of the employer, but not testifying, were CEO Andy Fogle, attorney David Shinkle, and human resource specialist Angie Hackenmiller. Employer's Exhibits 1 through 6 and claimant's Exhibits A through G were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time from June 2, 1989, until this employment ended on January 25, 2017, when he was discharged. At the time of his discharge claimant held the position of Chief Executive Officer (CEO).

The employer in this case is a credit union. In early fall of 2016, claimant requested an advance on the line of credit he had with the employer as a member. When the loan manager was processing claimant's request, he noticed claimant had been delinquent on his credit card with the employer. The employee handbook, which was drafted in part and approved by claimant, specifically prohibits employees from being delinquent on any debt. (Exhibit 1, pg. 14). The handbook also notes that employees who are also members are expected to act responsibility with their debt and are to hold themselves to a higher standard than a non-employee member. The loan manager took his findings to Williams, the Chief Financial Officer, for advice on how to proceed. Upon further investigation, Williams discovered claimant had been late on his credit card payments a total of 13 times. The employer's policy provides for immediate termination

after an employee is delinquent on a debt for a second time. Based upon his findings, Williams determined it was necessary to call a third party to perform an audit of claimant's activities.

A third party accounting firm completed their audit on October 21, 2016. The audit found claimant had committed several violations of the employer's policies and procedures. In addition to finding the claimant had been delinquent on his credit card account 16 times, the audit also discovered claimant had a box on his line of credit checked to indicate no fees should be applied to the account and had been performing transactions on accounts belonging to his family members. (Exhibit 3). The audit report notes, while it appeared no fees would have been charged to claimant's line of credit over the last 12 months, other employees indicated no credit union member should have this box check unless special circumstances are noted. In regards to the transactions completed by claimant on his family member's accounts, the report quotes the employer's policies as stating, "No employees will be permitted to transact their own, a relative's or personal friend's Credit Union business. Avoid direct or indirect financial interest with competitors, members, and suppliers." The audit found several instances where claimant was making transactions on the account of his aunt, Sandra Robinson, who is the former CEO of the credit union. The audit further discovered claimant had set up monthly ACH transfers from the employer's expense account to Robinson's account to reimburse her for dental premiums. The audit could not locate any agreements between the employer and Robinson approving reimbursements to her for dental coverage.

It was then determined a report should be made to the State of Iowa's Division of Credit Unions. This resulted in another investigation conducted by the Division of Credit Unions. Claimant was suspended in December 2016 pending the outcome of that investigation, which was completed on January 13, 2017. The investigation found claimant had violated the employer's policies, and possibly state regulations, in seven different areas. First, the report outlined issues with claimant's mortgage and concluded he was given more favorable terms and conditions than were available to other members. In support of this, the report notes he was granted an interest rate by Premier Lending Alliance (PLA) at a quarter percent lower than PLA's rates for his loan type; had the commitment fee waived on this mortgage, when no one else had this fee waived; and failed to establish an escrow account for the mortgage as required by the employer's policies. The second issue was with a mortgage granted to Robinson with terms and conditions more favorable than available to other members. The report found claimant approved a mortgage for Robinson with an interested rate of 3.00% when the PLA rate for the loan type was 3.625% and that he waived the requirement of an escrow account without obtaining proper documentation to do so. The third issue was an incident where claimant transferred money from Robinson's account to cover an overdraw on an escrow account. The fourth issue dealt with a mortgage claimant approved for an employee of the credit union, which also gave the employee a lower interest rate than PLA's rates for the loan type at the time. The fifth issue addressed the transfer of money from the credit union to Robinson's account for her dental premiums. The report notes the agreement between Robinson and the credit union states, "the dental insurance will continue and she will pay whatever the current rate is and adjusted from time to time to coincide with changes that could be made from year to year." At the time in question Robinson was not part of the employer's dental plan, had purchased her own dental plan, and was being reimbursed by claimant, on behalf of the employer, to cover the cost of the plan. The report also noted the individual plan rate offered by the credit union was \$19.61, but Robinson was being paid \$35.00, and that was later increased by claimant to \$36.76. The sixth finding was that claimant had completed 16 transactions in 2015 and 2016 on Robinson's accounts. Finally, the report cited an incident where claimant granted an auto loan to a member, who was also his friend, for a classic car. Claimant waived the requirement for an appraisal of the car and no valuation information was found in the file. It was also noted the

member had an unsecured line of credit, which had advances deposited directly into claimant's personal account, and that the auto loan was used to refinance the unsecured line of credit.

In addition to these seven findings, the report also noted that claimant's personal credit card was delinquent 18 times over the life of the account, nine times within the last year alone, and that his unsecured line of credit had a box checked excluding the loan from late fees. The report concluded claimant's conduct violated the employer's policies regarding ethical conduct, extension of credit to relatives and business employees, personal finance, fraud and dishonest conduct, the consumer loan policy, the mortgage loan policy, and Iowa Code Section 533.209 which prohibits employees from participation, either direct or indirect, in matters in which they may have a direct or indirect interest.

The report was sent to the employer's Board of Directors and insurance company. On January 25, 2017, the Board of Directors was notified via telephone by the insurance company that claimant's activities had rendered him uninsurable and his bond coverage was terminated effective immediately. The insurance company indicated they would follow up in writing once their own investigation had been completed, which they did. (Exhibit 6). The employer's policies require any employee to be eligible for bonding as a condition of initial or continued employment. (Exhibit 1, pg. 15). Williams further explained this is not only a condition set upon employees by the employer, but is required under the State of Iowa's regulations for credit unions. In light of this information, the board convened an emergency meeting and the decision was made to terminate claimant's employment, as his lack of insurability made him unemployable with them under the law. (Exhibit 5).

Claimant testified he was aware of the employer's policies and admitted he was responsible for forming, implementing, and conducting training on these policies. Claimant was also aware that he was required to be bonded under the employer's policies and the law. Claimant disputes that the conduct in question violated the employer's policies and provided explanations for his conduct as outlined in the independent audit and Division of Credit Unions investigation. In regards to the delinquency on his credit account, claimant noted his payments were never late enough that 30-day or 60-day notices were sent and that most payments were made within the five day grace period. Claimant testified while these payments were late, he did not consider them to actually be delinquent until they were more than 30 days late. Claimant's definition of delinquency is not found in the employer's policies.

When asked about the transactions claimant completed on behalf of Robinson, a relative, claimant testified he believed the term "relative" to only include immediate family members as defined in the employer's Bereavement Policy. The Bereavement Policy defines immediate family members as spouse, parent, child, brother, sister, or significant other. (Exhibit G). Claimant acknowledged the Bereavement Policy is in a wholly separated document than the consumer loan and mortgage policies. It should also be noted the Bereavement Policy is in a completely different part of the employee handbook than the policies involving handling transactions for relatives and that this section of the handbook specifically uses the terms "relative or personal friend" rather than the term "immediate family members" as used in the Bereavement Policy. Claimant further testified he believed it was appropriate to reimburse Robinson for her dental insurance because she was no longer eligible to be on the employer's policy, as contemplated in the original agreement, though he admitted he did not seek any additional approval in making the decision to reimburse her expenses.

In regards to the allegations that claimant was given or approved mortgage terms that were more favorable than those given to other members, he testified those terms were issued by PLA, a third party entity, and he had no way of knowing the terms were any different than those

issued to other members. Claimant testified he closed Robinson's escrow account because the loan to value ratio no longer required the account to be open. As for his own escrow account, claimant testified he believed the credit committee who reviewed his mortgage application knew he was asking the escrow requirement be waived, though the paperwork submitted to the committee does not necessarily make this clear, as it indicates on the first page that there will be escrow. (Exhibit E).

Finally, in regards to the auto loan made the claimant's friend, he admitted that failing to get an appraisal prior to approving the loan is generally not the employer's practice, but that he deemed it appropriate given his friend's positive membership history. When asked about the money being transferred from the friend's line of credit to claimant's account, he explained his friend was paying him to perform work on the car he had purchased. Claimant testified he did not believe there was any potential conflict of interest in him approving an auto loan for a vehicle that he was later paid to complete work on.

Claimant testified he understood that both the employer's policies and the law prohibit anyone working for a credit union who is not insurable. Claimant noted he was not asked to participate in either the third party audit or the investigation conducted by the Division of Credit Unions. Claimant testified he is confident that, had he been asked to participate, both investigations would have ended differently.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Here, the parties generally agree on the facts surrounding each circumstance, however, the issue of credibility comes in to play when assessing the reasonableness and plausibility of the claimant's explanation as to how he interpreted the policies and procedures as set forth by the employer. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant not credible. The claimant had worked for this employer for more than 25 years and at the time of his separation was the CEO. Claimant was involved in the drafting and approving of the policies and procedures in question and was responsible for training and implementation of these policies with other employees. Claimant was, or at the very least should have been, well aware of what the employer's policies were.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policies note that employees who are also members are to be an example to other members and are held to a higher standard than other members. It is

reasonable to hold claimant, as the Chief Executive Office, to an even higher standard. Claimant engaged in conduct which he knew, or should have known, were violations of the employer's policies that could lead to issues with his insurability. Claimant was also aware that, under both the employer's policies and state law, he could not work for this employer if he was found to be uninsurable. The Iowa Supreme Court has found that repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980). While this case does not deal with the issue of auto-insurance, it is similar in that the underlying issues address claimant's ability to remain employed once the insurance company found he was no longer eligible for coverage based on his conduct.

The employer is not obligated to accommodate the claimant during a revocation period but does have a legal obligation to abide by statutes and regulations promulgated by the Iowa legislature or other regulatory bodies and not allow uninsured individuals to work at a credit union. Here, claimant violated a series of work rules, which led to the employer's insurance company revoking his bond. Claimant knew, or at least should have known, that his conduct as it relates to these rules would bring his bondability into question. Claimant knew if he was not bondable, he would be separated from employment. Claimant's failure to maintain insurability as a known condition of the employment was misconduct sufficient to warrant a denial of benefits.

**DECISION:**

The June 13, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs