

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SEBASTIAN RAMIREZ**  
Claimant

**APPEAL NO. 19A-UI-00654-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US BANK NATIONAL ASSOCIATION**  
Employer

**OC: 12/30/18  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sebastian Ramirez (claimant) appealed a representative's January 18, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with US Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 7, 2019. The claimant participated personally. The employer participated by Eric Dowell.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in the fall of 2017, as a full-time teller. The employer did not issue the claimant any warnings during his employment.

His manager told him when he was required to log in to his human resource file on his computer. He followed the instructions and clicked a pop-up button that said he had read and would follow the employer's Code of Ethics. The claimant did not know how to open the Code of Ethics on his computer.

The Code of Ethics had a policy that said, "You may not approve or process any transactions, including paperless or online transactions, or your personal account, the accounts of immediate family members, the accounts of anyone with whom you have a significant personal relationship, financial or otherwise or accounts in which you have a personal financial interest or on which you are an authorized signer". The document stated that violation of the policy could result in disciplinary action "up to and including termination".

In the early part of December 2018, the claimant processed a \$50.00 deposit for his sister. His name was on the account because she was a minor when she opened it. He did not know of

the prohibition on personal or family member's accounts. On January 3, 2019, the employer terminated the claimant.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not

only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred in early December 2018. The claimant was not discharged until January 3, 2019. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's January 18, 2019, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs