

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNA WOLFE
Claimant

APPEAL NO. 08A-UI-07212-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEE COUNTY BANK & TRUST
Employer

OC: 07/06/08 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 31, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Karen Mehmert participated in the hearing on behalf of the employer with a witness, Kay Spieler.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a teller for the employer from November 6, 2007, to July 8, 2008. Karen Mahmert and Kay Spieler were the claimant's supervisors. The claimant received a verbal warning for visiting social networking sites using her computer during work hours. Some time after the claimant received the warning, she stopped doing this and there is no evidence that she had misused the internet during the two months before her discharge.

She received a verbal warning for reading a magazine on April 8, 2008, instead of performing her job duties and for not following instructions to report to the operations officer for instructions.

On April 29, 2008, the claimant was responsible for getting mail to the post office but she left some mail in the car that was later discovered. A couple of days later, the claimant did not follow instructions and put paper clips on statements instead of putting them in envelopes. She was also verbally counseled for these situations.

On July 1, 2008, the claimant's teller drawer did not balance. Her supervisors believed that the claimant refused to stay to help resolve the error when some other employees requested and went home. This is untrue, as the claimant was told by coworkers that they could not find the error, and no one asked her to stay to help resolve the error. On July 2, the claimant cashed a check from a person who did not have an account at the bank, which was against bank policy.

She did not do this deliberately. The person falsely represented that the person was a bank customer, and the claimant neglected to verify this.

The employer discharged the claimant on July 8, 2008, informing her that it was for unsatisfactory work performance.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The most recent conduct on July 1 and July 2 does not amount to willful and substantial misconduct. On July 1, there is no credible evidence to support the employer's hearsay allegation that coworkers requested that the claimant stay to help find the shortage and she refused. The claimant did not deliberately violate bank policy on July 2, but instead was negligent in not verifying the person who was cashing a check was a customer. This was ordinary negligence that does not equal willful misconduct in culpability. None of other conduct presented by the employer can be considered current, as it happened months before the claimant was discharged.

DECISION:

The unemployment insurance decision dated July 31, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw