

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKY J SCHWEDE
Claimant

SECURITY NATIONAL BANK
Employer

APPEAL 17A-UI-04905-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 4, 2017, (reference 02) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2017. Claimant participated. Employer participated through human resources generalist Keri Struve and assistant vice president of retail services Mandi Sievers. Claimant's Exhibit A was received. Employer's Exhibits 1 through 3 were received.

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 began working for employer on November 7, 2016. Claimant last worked as a full-time customer service representative. Claimant was separated from employment on April 19, 2017, when she was terminated.

Employer trains its employees on professionalism at the beginning of their employment. Its employee handbook states all employees are expected to act with integrity. Employer has a code of conduct stating employees must never disclose any information about the bank's customers. A breach in confidentiality may result in a disciplinary action up to and including termination. Claimant was aware of the policy.

At the beginning of April 2017, claimant told her co-workers that her boyfriend was unemployed because he worked for the mayor's son whose business was going under. Claimant was speaking so loudly that the branch manager could hear the conversation from his office. The branch manager explained to claimant that if he could hear the conversation, customers could as well and that employer has zero tolerance for sharing confidential information.

On Monday, April 10, 2017, claimant's co-worker was helping a customer with a transaction. Claimant inserted herself into the conversation and asked the customer how her kitchen

remodeling was going. The customer asked claimant how she knew about the remodeling project. Claimant told the customer she helped another gentleman earlier in the week who cashed a check from her account that stated "kitchen remodel" in the memo line. The co-worker reported the incident to the branch manager the same day.

Assistant vice president of retail services Mandi Sievers was claimant's direct supervisor and had the authority to terminate her employment. At the time, Sievers was away at a work conference. When Sievers returned, claimant's employment was terminated April 19, 2017.

On December 12, 2016, claimant received a written warning regarding inappropriate conversations in the workplace, including referring to a customer as a potential "sugar daddy."

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 § 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.

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).

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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

In this case, employer presented substantial and credible evidence that claimant had inappropriate conversations in the workplace after having been warned. Although claimant asserts she did not realize her conversations were inappropriate, she had been spoken to on multiple occasions and the employer's confidentiality policy clearly states that confidential information includes any information which is not generally known other than by bank employees. Claimant repeated what the "memo line" of a customer's check stated and how another customer came into the bank to cash the check. This very clearly falls into that category. Benefits are denied.

DECISION:

The May 4, 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 claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn