IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

GINGER L KROMRIE
Claimant

APPEAL NO. 11A-UI-13213-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BANK OF AMERICA NA
Employer

OC: 09/04/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the September 26, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 31, 2011. Claimant participated. Employer participated through senior investigator Ted Knesek and banking center manager Amber Tompkins. Employer's Exhibit 1 (pages 1 – 9) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a senior teller and was separated from employment on August 30, 2011. An anonymous caller to the employer's hotline reported that claimant had accessed a family member's (daughter) account via a teller platform program. Her daughter asked her to check the balance to see if claimant needed to move money to her daughter's account. She had accessed her daughter's and her own account using the teller platform between April 2011 and August 24, 2011. Associates are only able to access their account by the same means as a regular customer would be able to do and may not access a family member's account without management approval but trainer Marissa told claimant she could use the research tab of the teller platform to access information. Marissa did not specify whether that included her daughter's account or not. She did not have internet service at home and did not know that she could use internet banking from work to do so. Marissa did not participate in the hearing. After claimant raised the question in a group "huddle" in July, banking center manager Amber Tompkins said she would look into it but did not tell her not to look up information in the meantime. Claimant was on vacation from August 11 through 22 and returned to work on August 23. Tompkins did not tell claimant she could not look up account information on the research tab until a group "huddle" on August 25 after she had already accessed the information on the 24th.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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.

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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since Tompkins did not correct the erroneous policy information Marissa gave claimant until August 25 after the claimant had already used the platform research tab, that was the final incident for which the claimant was discharged, and the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company

policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Employer has not established a current or final act of misconduct; accordingly, benefits are allowed.

DECISION:

The September 26, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css