

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTI J TYLER
Claimant

APPEAL NO: 09A-UI-15083-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIBERTY BANK F S B
Employer

OC: 09/13/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's September 30, 2009 decision (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on November 9, 2009. The claimant participated in the hearing with Mike Nguyen, a Drake Law student. Robert Oberbilling, the supervising attorney, observed the hearing. Sonya Frickenstein and Judy Stoll appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 1, 2008. She worked as a full-time teller. Stoll, the branch manager, supervised the claimant. Prior to September 4, 2009, the claimant's job was not in jeopardy. The claimant had not received any warning about the way she balanced her cash register drawer.

The claimant understood force balancing a drawer was not acceptable and could result in an employee's immediate termination. (Employer Exhibit Three.) At branch sales meetings, Stoll reviewed the employer's procedures with the claimant and her co-workers. (Employer Exhibit Two.)

Before 1:00 p.m. on September 4, the claimant counted a co-worker's drawer, Dianna, to see if she could find the \$30.00 that was short for this drawer. The claimant could not find the shortage. Stoll knew about the \$30.00 shortage and asked the claimant to balance her cash drawer before she went to lunch. The claimant used the computer program, EZteller, to count or audit her drawer before she went to lunch at 1:00 p.m. After the claimant counted her drawer, she believed it balanced and relayed this information to Stoll. The claimant was at

lunch from 1:00 to 2:00 p.m. While she was at lunch, Stoll and Dianna counted Dianna's drawer again. The drawer was still \$30.00 short. The money in the vault balanced. On September 4 at 1:52 p.m. an EZteller ticket indicates an audit was done on the claimant's drawer. The 1:52 p.m. audit showed the claimant's drawer was balanced. At 2:22 p.m., the EZteller audit form indicated another audit was done. This audit showed the claimant's drawer was \$5.45 long. There were four areas that were different than the 1:52 p.m. audit. (Employer Exhibit One.) When the employer asked the claimant to sign the audit report, she did not realize she had not personally completed either of the audits.

The employer concluded that instead of accurately reporting her drawer was \$5.45 long, the claimant misrepresented the amount of money in her drawer by force balancing her drawer to show it balanced before she went to lunch. The employer discharged the claimant on September 11 for misrepresenting the balance in her drawer on September 4.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant did not audit her drawer at 1:52 or 2:22 p.m., the evidence does not establish what the claimant counted or reported on the EZteller audit just before 1:00 p.m. In the alternative, if the 1:52 p.m. EZteller audit is a copy of the audit the claimant completed before 1:00 p.m. but printed out at 1:52 p.m., the facts do not establish the claimant intentionally misrepresented the amount of money in her cash drawer. If the claimant's drawer did not balance, she may have been negligent in counting money on September 4, but the facts do not establish that she intentionally misrepresented the amount of money in her drawer. This conclusion is supported by the fact there were no previous problems and the claimant tried to find a \$30.00 shortage in a co-worker's drawer that day. Based on the evidence presented during the hearing, the claimant did not force balance her drawer before she went to lunch. The claimant did not commit work-connected misconduct. Therefore, as of September 13, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's September 30, 2009 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 13, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs