

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J JANSEN

Claimant

APPEAL NO. 15A-UI-11717-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST DUBUQUE SAVINGS BANK

Employer

OC: 09/13/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Jansen (claimant) appealed a representative's October 16, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with East Dubuque Savings Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 23, 2015. The claimant was represented by Jason Lehman, Attorney at Law, and participated personally. Tiffany Helmrichs, the employer's customer, testified on behalf of the claimant. The employer was represented by Davin Curtiss, Attorney at Law, and participated by Lori Thielen, President; Donna Quinn, Senior Vice President and Chief Financial Officer; and Darren Jones, Network Administrator. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibits Two, Three, Four, Five, Six, Seven and Eight were received into evidence.

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 on January 31, 2007, as a full-time investment representative. The claimant signed for receipt of the employer's handbook and confidentiality policy annually. The claimant regularly sent e-mails to himself to view on his phone or a computer he used at a friend's home. The e-mails contained confidential bank information he needed to work on the employer's business. The employer did not issue the claimant any warnings.

At the end of August 2015, the claimant spoke with the employer and the president about purchasing the employer's assets. The claimant and the president knew the claimant was interested in purchasing the book of business and needed to value the asset. The claimant sent e-mails containing confidential information about customers to his computer. The employer knew the claimant was sending the e-mails but did not talk to the claimant about them or tell him to stop.

On September 11, 2015, the claimant sent an e-mail containing confidential information about customers to his friend's home computer. He told his friend he was sending an e-mail she should not open prior to sending it. She did not open the e-mail and never saw the information. After he was finished, he removed the e-mail from the computer. On September 14, 2015, the employer terminated the claimant for disclosing confidential customer information to a non-employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer allowed the claimant to send confidential

e-mails for some time without incident. On September 9, 2015, the employer knew the claimant was sending e-mails but did not issue the claimant a warning. It appears this was part of how the claimant performed his job duties.

Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 16, 2015, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs