

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIANA R MCGUIRE
Claimant

APPEAL NO. 07A-UI-00643-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BANK OF THE WEST
Employer

OC: 12/17/06 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Bank of the West, filed an appeal from a decision dated January 8, 2007, reference 01. The decision allowed benefits to the claimant, Tiana McGuire. After due notice was issued a hearing was held by telephone conference call on February 5, 2007. The claimant participated on her own behalf. The employer participated by Regional Human Resources Officer Karen Smith, Regional Customer Service Manager Tracy Moyle and Regional Manager Lisa Kelsey. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Tiana McGuire was employed by Bank of the West from March 13, 1998 until December 15, 2006. She was a full-time customer service manager.

An employee of the branch bank where the claimant worked reported to the regional manager at the time that she believed there had been some falsification of documents, some cash audit reports for the month of November. An investigation was done and it was found that the claimant had been required to audit the cash drawer of each of the nine cashiers at least once during the month of November 2006. When the regional customer service manager had requested her to submit them at the beginning of December 2006, the claimant had not completed four of the reports. Instead of reporting this to her manager, the claimant pulled journal tapes from these four cashiers, compared them with the computer records, and merely wrote down the numbers on the report form. There was no actual count done in the presence of the cashier as required.

The claimant was interviewed and acknowledged she had not done the audits in the manner required. The employer considered this to be falsification of company documents and gave the

claimant the choice of resigning or being discharged. She elected to resign effective December 17, 2006.

Tiana McGuire has received unemployment benefits since filing a claim with an effective date of December 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant may have submitted a resignation but under the provisions of the above Administrative Code section, this is not a voluntary quit because continuing work was not available to her. She would have been discharged if she had not resigned. Therefore the determination must be whether she was discharged for misconduct. The claimant did knowingly falsify a company document, knowing this was prohibited by the code of ethics and was subject to discharge. Her belief that the disciplinary consequences would not be that severe still does not constitute justification for falsifying the audit reports. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 8, 2007, reference 01, is reversed. Tiana McGuire is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,787.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs