

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTOPHER R DOEPP
Claimant

APPEAL 17A-UI-10815-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

**OC: 09/10/17
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the October 11, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2017. The claimant participated and testified. The employer participated through Branch Manager Michelle Lambert. Employer's Exhibits 1 through 3 were received into evidence.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a sales and service manager from December 14, 2015, until this employment ended on September 11, 2017, when he was discharged.

On December 22, 2016 claimant was given a verbal warning for not following proper procedure on a credit card cash advance. On August 1, 2017, claimant was issued a written warning for incidents that occurred on May 15, 2017 and July 18, 2017. The May 15 incident involved a situation where claimant improperly opened a new account for a customer that owed money on an overdraft of a prior account. The July 18 involved a situation in which a customer had come in with a check for \$2,750 and requested to take \$2,400 back in cash. The claimant did not follow the proper procedures for verifying the check and it turned out to be fraudulent. The warning advises that failure to improve could result in termination.

On September 11, 2017, claimant was the subject of an exposure review. Under the employer's policies tellers are allowed to have no more than \$12,500 in cash in their drawers at a time, in order to minimize liability if a robbery were to occur. An exposure review is a check of the drawer to ensure it is under the \$12,500 maximum. Claimant was aware of the policy, as he was a manager and had previously conducted such reviews. Claimant was working as a teller on the date in question and when his drawer was counted he had \$23,800 in cash. The policy provides the teller should have a reasonable amount of time to "sell down" excess cash to the vault. Lambert testified, prior to conducting the exposure review, she observed claimant for approximately a half an hour and determined he should have had sufficient time to complete the sell down. Claimant testified he did not have sufficient time to complete the sell down because he was attempting to enter night deposits, which contributed to the large amount of cash in his drawer, and take care of customers. According to claimant, he completed the sell down at the soonest possible time, which was not until right after his lunch break. Claimant testified he was not given a chance to explain this before the decision was made to discharge him from employment. Lambert testified the decision was based on the September 11 incident, combined with claimant's history of cash handling policy violations.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 10, 2017. The claimant filed for and received a total of \$3,682.00 in unemployment insurance benefits for the weeks between September 10 and November 4, 2017. Both the employer and the claimant participated in a fact finding interview regarding the separation on October 5, 2017. The fact finder determined claimant qualified for benefits.

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 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 employer has the burden of proof in establishing disqualifying job misconduct. *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). 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). 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. While claimant did have prior violations of the employer's cash handling policies, these incidents all involved separate and distinct procedures. The policies and actions involved in each incident are notably different from each other. Furthermore, it appears when claimant received coaching on each incident he did not commit the same violation again. To the extent that the circumstances surrounding each incident were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000).

A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The October 11, 2017, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs