

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE M ROLING**

Claimant

**AMERICAN TRUST & SAVINGS BANK**

Employer

**APPEAL NO: 12A-UI-09902-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/15/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 6, 2012, reference 01, that held she was discharged for misconduct on July 16, 2012, and benefits are denied. A telephone hearing was held on September 10, 2012. The claimant participated. Gary McAndrew, Executive VP, and Justine Bemis, Branch Service Manager, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on October 30, 1995, and last worked for the employer as a full-time branch service representative on July 16, 2012. The employer had issued claimant written and verbal warnings for tardiness issues on November 4, 2011 and December 21. The employer issued claimant a final written warning for tardiness on July 13, 2012 with a 90-day probationary period where she was not to incur a further issue during that period and face employment termination. Claimant did not question her tardiness record. She did not request to see her personnel file.

The next morning, July 14 Manager Bemis entered the bank and she caught claimant in her office looking at a file. Claimant gave her personnel file to Bemis that she kept in a desk drawer. The employer discharged claimant on Monday July 16 for a serious breach of privacy and security issue by entering Bemis' office and getting her personnel file without permission.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on July 16, 2012.

The claimant committed a serious act of misconduct by entering the privacy of her supervisor's office and getting her personnel file from her desk without permission. Claimant offered lapse of judgment as her reason for the act, but this was a deliberate offense that constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated August 6, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on July 16, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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