

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY REINKING

Claimant

APPEAL NO. 10A-UI-04475-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION HOME LOANS INC

Employer

OC: 02-14-10

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 11, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 6, 2010, and was continued to and concluded December 9, 2010. The claimant participated in the hearing with Attorney Andrew Larson. Owner Reg White, Managing Partner Fran White, and Office Manager Amanda Burden participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time branch manager for Action Home Loans from January 2008 to February 23, 2010. She was discharged due to theft of proprietary information, breaches of confidentiality, unethical conduct, and blatant disregard for, and violation of, the company's Red Flag Policy regarding the privacy of its clients' personal and financial information. Without authorization from the client and unbeknownst to the employer, the claimant transferred a client's home loan information away from the employer and to a competitor lender on February 1, 2010. Her actions were in violation of federal laws, company policies, and both the confidentiality agreement and loan originator agreement that she signed for the employer. The employer learned about the claimant's actions by accident. Branch Manager Chris Devore had the phones transferred to him February 15, 2010, when the office was closed. Marty from M&I Bank left a voice mail asking for a Kevin Kirsch regarding a loan for James Coder. Mr. Devore recognized the name as a file on which the claimant had been working. She was late in arriving to work the next day, so Mr. Devore followed up with M&I Bank himself. He spoke with Marty and told her no one named Kevin Kirsch worked there and she admitted she had called the wrong office. Mr. Devore researched the FHA case number, which, after assigned, can only be released by the office from which it originated. Mr. Coder's

loan had been transferred to Ace Lending and the claimant was the only person at the time with access to transfer case numbers. Mr. Devore spoke with Owner Reg White and they eventually spoke with Mr. Coder about the situation. Mr. Coder was confused and upset about the incident, as he had received calls from Ace Lending but only wanted to work with the employer. The employer discovered the claimant had faxed 17 pages to Ace Lending and had several e-mails in which she was linked with Ace. The employer had initiated the file and pulled and paid for the credit report and the claimant transferred the FHA case number assigned to Ace within 24 hours of the file being opened. Transferring the case number to Ace was a violation of the loan origination agreement. The employer had the claimant's computer blocked but reinstated her access for 15 minutes before lunch and afterwards saw the claimant had exported six files from the employer's data base. Four were closed, one was a week away from closing, and the last one had not closed. The employer also found an attachment with 700 contacts from the employer's database that had been exported. The employer suspended the claimant February 18, 2010, pending further investigation. The employer had to turn over all information to the FBI, FTC, HUD, and the Iowa Division of Banking.

The claimant filed a claim for unemployment insurance benefits and has received benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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 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 claimant was discharged February 23, 2010, for violation of federal law, company policy, a confidentiality agreement, and a loan origination agreement. Additionally, there is no question the claimant was illegally transferring the employer's loan files to a competitor and without the customer's knowledge or approval. The claimant's actions show a willful or wanton disregard of the standards of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Consequently, the employer has met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The March 11, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw