

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON J LENTZ**

Claimant

**APPEAL NO. 11A-UI-07081-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BANK OF AMERICA NA**

Employer

**OC: 05/08/11**

**Claimant: Appellant (2)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Aaron Lentz filed a timely appeal from the May 27, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 22, 2011. Mr. Lentz participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Aaron Lentz was employed by Bank of America as a full-time sales and service specialist from August 2010 until May 11, 2011, when Branch Manager Jordan Jones discharged him from the employment. Ms. Jones was Mr. Lentz's immediate supervisor.

The final incident that triggered the discharge involved Mr. Lentz's handling of a \$1,200.00 check presented to him at the end of April 2011. The check was written on a Bank of America account. The person who presented the check was the grandchild of the account holder and the purported payee. The check bore a payor signature purporting to be the account holder's signature. The grandchild of the account holder had in fact forged the account holder's signature. Mr. Lentz "skimmed" the check, but did not examine it closely enough to detect problems with the signature indicative of fraud. Mr. Lentz had available to him the account holder's signature card as well as the signature as it appeared on past checks written on the account. Mr. Lentz cashed the check. The account holder later contacted Bank of America to report the fraudulent withdrawal from the account.

A week before Mr. Lentz was discharged from the employment, a coworker alerted him that the account holder had come to the bank to report fraud on their account in connection with the check Mr. Lentz had accepted and processed. Mr. Lentz did not hear anything more about the

check until May 11, when Ms. Jordan and the assistant branch manager met with him to tell him he was being discharged based on his handling of the check transaction.

Mr. Lentz had received a warning in February 2011 for performance, based on the employer's belief that he was not generating enough business.

### **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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer failed to appear for the hearing and thereby failed to present any evidence to support the allegation that Mr. Lentz was discharged for misconduct in connection with the employment.

Mr. Lentz concedes he was negligent in his handling of the \$1,200.00 check presented to him at the end of April 2011. Given the size and nature of the check presented to Mr. Lentz, a reasonable person would have taken greater care to ascertain whether the check had been authorized by the account holder. Mr. Lentz had the tools available to him to do a more careful review to protect the account holder and the bank. Mr. Lentz knew how to use those tools. Under the circumstances, the fact that the bank was busy at the time does little to mitigate the negligence involved in Mr. Lentz's handling of the check.

The evidence establishes only this isolated incident of negligence. In the absence of a *pattern* of carelessness and negligence indicating a willful and/or wanton disregard of the employer's interests, the evidence fails to establish misconduct in connection with the employment that would disqualify Mr. Lentz for unemployment insurance benefits. Mr. Lentz is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Lentz.

**DECISION:**

The Agency representative's May 27, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw