

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRENDA COUNTRYMAN**  
Claimant

**APPEAL 19A-UI-07292-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREENSTATE CREDIT UNION**  
Employer

**OC: 08/04/19  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant, Brenda Countryman filed an appeal from the September 3, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2019. Claimant participated personally. Employer participated through Sarah Farnsworth, human resources manager. The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits A-D were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment in January 2019 and was employed full-time as a member services representative until August 1, 2019 when she was discharged.

The claimant's job duties included handling deposits, withdrawals, payments and other cash handling functions. The claimant was assigned her own cash drawer throughout her employment to help track shortages/overages as they occurred. The claimant had been encouraged throughout employment to balance her drawer during the day so that if there was an issue, it could be researched and resolved sooner rather than later.

During the first month of employment, the claimant primarily observed her co-workers as part of her on the job training. During the month of February, the claimant had the following variances in her transactions: (Employer Exhibit C).

February 6, 2019	\$492.98	Short
February 19, 2019	\$180.22	Over
February 22, 2019	\$ 37.06	Short
February 23, 2019	\$ 0.91	Short

February 25, 2019	\$ 45.00	Short
February 28, 2019	\$507.00	Short

The employer documented a discussion about the variances with the claimant on March 12, 2019 by way of a balancing record review. The employer also stated some of the variances may have been attributed to the employer's platform freezing.

In April 2019, the claimant had the following variances: (Employer Exhibit D)

April 2, 2019	\$ 1.00	Over
April 4, 2019	\$971.19	Short
April 5, 2019	\$ 0.60	Over
April 8, 2019	\$335.47	Short
April 12, 2019	\$ 85.00	Short
April 19, 2019	\$357.36	Over
April 20, 2019	\$ 2.87	Short
April 30, 2019	\$ 1.03	Short

In the balancing review discussion form presented to the claimant, the employer provided its cash handling policy and procedure review (Employer Exhibit C,D).

The claimant was given a final written warning effective May 23, 2019 (Employer Exhibit A). Between May and June, the claimant had the following variances:

May 1, 2019	\$ 1.00	Over
May 2, 2019	\$111.41	Over
May 8, 2019	\$ 42.00	Short
May 7, 2019	\$ 0.41	Short
May 13, 2019	\$ 0.25	Short
May 15, 2019	\$ 49.80	Short
May 25, 2019	\$ 0.12	Short
June 1, 2019	\$200.00	Short
June 7, 2019	\$ 10.50	Short
June 8, 2019	\$ 1.50	Short

In some cases, the claimant's failure to maintain proper records of her transactions resulted in members being delayed access to money they were entitled to have. The final incident occurred on July 24, 2019. The claimant cashed a check without "running it through the system" which meant she simply took the check and disbursed cash to the member without verifying the check was valid or entering it into the employer's platform for accounting purposes. The claimant acknowledged the usual procedure was to run the check through the employer's system before disbursing cash but that she was busy and forgot that day. She was subsequently discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In this case, the claimant was responsible for handling the assets and money of the employer's members on a daily basis. Understandably, accuracy is critical in this context. The claimant had previously been repeatedly counseled for nearly \$3,000.00 in shortages or overages that occurred between February - June 2019, due to the claimant's mishandling of transactions. The claimant knew or should have known her job was in jeopardy as a result. The final incident occurred when the claimant failed to run a check through the employer's platform before disbursing cash to the member. This step ensures the check is accounted for and also not fraudulent. The administrative law judge is not persuaded that running the check would be unduly burdensome or unreasonable to expect before disbursement of funds. The administrative law judge is also not persuaded that the claimant being busy would mitigate her non-compliance with the employer's reasonable expectations. The claimant knew the established policy and chose to bypass it. The claimant failed to exercise reasonable care in the performance of her job duties after repeated warnings. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the employer has met its burden of proof to establish that the claimant was discharged for misconduct. Benefits are denied.

**DECISION:**

The September 3, 2019 (reference 01) unemployment insurance decision is affirmed. 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.

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Decision Dated and Mailed

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