

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

GARY R HUNT  
911 W NEVADA ST  
MARSHALLTOWN IA 50158

COMMERCIAL FEDERAL BANK  
c/o TALX – JOHNSON & ASSOC  
PO BOX 6007  
OMAHA NE 68106 6007

Appeal Number: 04A-UI-10934-DWT  
OC: 09/12/04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Commercial Federal Bank (claimant) appealed a representative's September 30, 2004 decision (reference 01) that concluded Gary R. Hunt (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2004. The claimant participated in the hearing. The claimant's subpoenaed witnesses, Diane Hunter and Shannon Pickett, appeared for both the claimant and the employer. Suzanna Ettrich, an attorney, represented the employer. Dan Boes, the branch manager, also appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 2, 2001. He worked as a part-time client service representative. The claimant worked about 20 hours a week. The claimant received a copy of the employer's work rules. The employer's policy indicates an employee may be discharged immediately if the employee engages in the process of force balancing. (Employer's Exhibit One.)

On September 1, 2004, the claimant was \$60.00 long at the end of his shift. The claimant believed he had accidentally short-changed one customer. The claimant called the customer to make sure she had received the correct amount of money. The claimant was not able to talk to the customer, but left a message. When the customer did not call the claimant by the time he left work, he put \$60.00 in a plastic bag and even made out a deposit slip with the customer's account number on it. The claimant told co-workers about the mistake he believed he made. When the claimant completed his paperwork on September 1, he did not report that he was long by \$60.00. Instead, his report indicated his drawer balanced out. On September 1, a co-worker reported to Boes that the claimant did not accurately report the money in his drawer.

On September 3 the claimant returned to work and a co-worker audited his drawer. The audit reflected the claimant was \$60.00 long. The \$60.00 the claimant had put in a plastic bag before was still in the bag. After the audit, the claimant learned the customer had returned his call and indicated she had received her correct change.

The employer considered the claimant's action to have violated the employer's policy because had force balanced his drawer. Even though Boes learned about this incident on September 1, the employer did not discharge the claimant until September 15, 2004. The employer discharged the claimant for the September 1 forced balancing incident. The employer noticed in his personal file that the claimant received a performance expectation notice on August 18, 2003. (Employer Exhibit Two.) Problems the former manager noted in August 2003 had been resolved.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant violated the employer's policy that does not permit employees to force balance. While the employer had talked to the claimant over a year ago about performance issues, the employer had never talked to the claimant about force balancing his drawer. Even though the claimant did not accurately report the money in his drawer at the end of his shift, he advised his immediate supervisor of what he believed had happened and that he had the money set aside for the customer. The claimant did not hide anything. He made an error in judgment when he did not accurately record that he was long \$60.00 on September 1. Under the facts of the case, the claimant did not intentionally or substantially disregard the employer's interests. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of September 12, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's September 30, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 12, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf