

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRETCHEN A FOTTRAL
Claimant

APPEAL NO. 14A-UI-05856-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

OC: 05/11/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 29, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on June 30, 2014. Claimant Gretchen Fottral participated. Nick Krumbholz represented the employer and presented additional testimony through Heather Aston. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant and received Exhibit One into evidence.

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: Gretchen Fottral was employed by U.S. Bank from 2008 until May 12, 2014, when Nick Krumbholz, Marion Branch Manager, discharged her from the employment. Mr. Krumbholz had become Ms. Fottral's immediate supervisor in February 2014. Ms. Fottral had started the employment as a personal banker. During the last two and a half years of the employment, Ms. Fottral worked as a Universal Banker. Ms. Fottral spent half of her time working as a teller and the other half assisting customers with opening new accounts and other customer service matters.

The incident that triggered the discharge occurred on May 2, 2014 at a time when Mr. Krumbholz was away from the Marion branch and Heather Austin, Assistant Manager at the Amana branch, was filling in as a supervisor at the Marion branch. Right before Ms. Fottral left work that day, she took a call from her sister. Ms. Fottral's sister was formerly a branch manager for U.S. Bank, but at the time of the call worked for Bank of the West, a competitor of U.S. Bank. Ms. Fottral's sister called to inquire whether a customer that the two banks had in common had sufficient funds in his U.S. Bank account to cover a transaction the customer desired to make at Bank of the West. Ms. Fottral confirmed for her sister that the customer had

sufficient funds to cover the transaction. Ms. Fottral did not perceive that she might be violating U.S. Bank confidentiality protocol at the time of the call from her sister. Ms. Fottral knew it was a violation of the employer's policies to give out information over the phone to a person she did not know. At the time of the call, Ms. Fottral understood that mutual courtesy with another bank professional, who in this case happened to be her sister, was to the benefit of both institutions and was to be fostered so long as there was no harm to the client. Ms. Fottral did not perceive any harm to the client in connection with her sister's call, since she and her sister were both trying to carry out the client's desired transaction.

When Ms. Austin perceived Ms. Fottral's conversation with her sister to be a breach of the employer's code of conduct. Ms. Austin reported the matter to Chuck Frederick, District Manager. Mr. Frederick met with Ms. Fottral to discuss the matter and Ms. Fottral admitted to the conversation with her sister about the mutual client's available funds. At the time of the interview, Mr. Frederick told Ms. Fottral that he was uncertain whether she had violated bank protocol and that mutual courtesy between banking professionals was to be fostered. Mr. Frederick subsequently brought Mr. Krumbholz up to speed on the matter and advised that the employer's human resources department had decided that Ms. Fottral should be discharged from the employment. When Ms. Fottral arrived for work on May 12, 2014, Mr. Krumbholz notified Ms. Fottral of the discharge after speaking to her briefly about the incident.

Ms. Fottral had not received prior reprimands for similar conduct. At the time of the discharge Ms. Fottral was on a performance improvement plan based on the employer's rating of her performance as part of an annual review. The performance improvement plan was unrelated to the final incident.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

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).

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 evidence in the record fails to establish anything more than a good faith error in judgment. Mr. Krumbholz testified that he did not believe Ms. Fottral had knowingly violated the employer's protocols. The evidence indicates that Ms. Fottral shared with her sister, a banking professional with another institution, only that information necessary to complete the transaction the mutual client desire to make. Ms. Fottral acted with the belief that she was serving the interests of the customer and her employer. Even if Ms. Fottral's conduct had risen to the level of carelessness or negligence, the evidence in the record does not establish a pattern of such conduct that would indicate a willful or wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Fottral was discharged for no disqualifying reason. Accordingly, Ms. Fottral is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's May 29, 2014, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs