

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALBRINA D WILLIAMS**  
Claimant

**APPEAL NO. 09A-UI-07825-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BANKERS TRUST CO**  
Employer

**Original Claim: 04/26/09  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Albrina D. Williams filed a timely appeal from an unemployment insurance decision dated May 22, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held June 15, 2009, with Ms. Williams participating. Senior Human Resources Vice President Renee Hardman, Customer Services Vice President Sandra Miller, and Customer Services Supervisor Gena Adamovich participated for the employer, Bankers Trust Company.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Albrina D. Williams was employed by Bankers Trust Company from June 11, 2007, until she was discharged April 21, 2009. She last worked as a customer service representative. On April 21, 2009, Customer Services Vice President Sandra Miller requested a review of e-mails sent from Ms. Williams' workstation during the week of April 13 through April 17, 2009. Senior management reviewed the e-mails and found that there were 123 personal e-mails sent during that week during times that Ms. Williams would have been on duty, not on break and not at lunch. Company policy, of which Ms. Williams had received a copy, states that personal e-mails should be kept to a minimum and should not interfere with productivity. Company records establish that during the first quarter of 2009, Ms. Williams handled an average of 52 customer service requests per day. The average for the six-member section was 77.

In the past, Ms. Williams had been given a written warning concerning excessive use of her personal cell phone while on duty. She had received informal reminders of this in early 2009. In her annual evaluation given to her in January 2009, Ms. Williams received low marks for customer service and for teamwork.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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's evidence was detailed, plausible, and consistent, despite cross-examination by Ms. Williams. The evidence establishes a pattern of personal business being conducted by Ms. Williams on company time. The evidence persuades the administrative law judge that Ms. Williams had been adequately placed on notice that this behavior was contrary to the employer's expectations. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated May 22, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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