

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL ATZEN
Claimant

APPEAL NO: 10A-UI-14854-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BANKERS TRUST CO
Employer

OC: 09/26/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Atzen (claimant) appealed an unemployment insurance decision dated October 20, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Bankers Trust Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 29, 2010. The claimant participated in the hearing with Attorney Brad Skinner. The employer participated through Renee Hardman, Senior Vice-President of Human Resources and Rob Reinard, Supervisor. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time Assistant Vice president business banker from June 1, 2009 through September 23, 2010. He was discharged for multiple violations of the bank's loan policies. The claimant made loans in June 2010 and August 2010 but the employer did not learn about the loans until an investigation was initiated on September 16, 2010. The employer had a meeting with senior loan officers and staff on September 15, 2010 during which the bank's portfolio was reviewed. The claimant attended this meeting but never mentioned he had any questionable loans. On the day after the meeting, the bank's senior credit officer asked Supervisor Rob Reinard to review the documentation on four loans the claimant had completed. Mr. Reinard investigated the loans and met with the claimant on September 21, 2010, which was the first time the employer learned of the claimant's policy violations.

The employer considers an undesirable loan as a loan to a party who has demonstrated a disregard for timely payment and performance of credit obligations. The claimant extended a loan to customer Jeffrey Williams on June 11, 2010 without running a credit report and the loan

turned out to be an undesirable loan. The claimant used to work with Mr. Williams and he testified that his failure to run a credit report was just an "oversight." He issued a \$9,000.00 loan to Mr. William on an eight-year-old auto when Mr. William's current vehicle loan was 90 days in arrears. The claimant also issued Mr. William a \$10,000.00 line of business credit, which was fully advanced within a short period of time. If the claimant had run a credit check, he would have learned the customer had not made a house payment in the last year and had delinquencies on his credit report for the years 2004, 2005, 2006, 2008, 2009 and 2010. The customer's credit record also showed he was delinquent on his child support in the amount of \$11,000.00. The employer testified these loans should not have been made.

The claimant had authorization to issue an unsecured loan up to \$25,000.00. The employer's policy regarding unsecured loans for a business enterprise or individual for business purposes requires income statements showing consistently profitable operations sufficient to document that the borrower will have the capacity to amortize the loan within five years as demonstrated by a global cash flow analysis. The claimant worked with Corey's Irish Pub regarding an unsecured loan and this customer had less than two years operations, with both years reported as losses. According to the bank's policies, this customer would not have been approved for an unsecured loan.

However, the claimant issued an unsecured loan to Corey's Irish Pub on June 15, 2010 for the amount of \$30,000.00. The customer claimed that it was going to receive a grant and signed a commitment letter stating that it would pay off the loan with the proceeds of that grant. The claimant had no official grant documentation but testified he contacted the person who was going to allegedly approve the grant and that person emailed him stating the pub was going to be approved for a grant. The claimant subsequently issued an additional loan to Corey's Irish Pub in the amount of \$20,000.00 on August 13, 2010 for an outstanding debt of \$50,000.00.

The employer did receive weekly notifications that the claimant had issued loans and the amount for which they were approved but no further information was provided on this weekly notification. The claimant's failure to follow loan policy has resulted in the employer having four loans which are currently past due.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 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 claimant was discharged on September 23, 2010 for failing to follow bank policies. He contends the discharge was for past acts that occurred three months prior to the discharge. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension 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). The administrative law judge concludes the claimant was discharged for a current act since the employer acted promptly upon information of the claimant's policy violations.

The claimant's failure to follow established bank loan policies shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated October 20, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs