

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN STORTZ**

Claimant

**APPEAL NO: 11A-UI-13507-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US BANK NATIONAL ASSOCIATION**

Employer

**OC: 09-18-11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 5, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2011. The claimant participated in the hearing. Angela Imming, District Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time branch manager for US Bank National Association from July 1, 2009 to September 16, 2011. He was discharged for engaging in six transactions with one of his roommates, Brian Sender, in violation of the employer's Code of Ethics. The claimant was not aware that roommates were specifically covered by the Code of Ethics. The claimant, Mr. Sender, Mr. Sender's brother Scott, and another person lived in a house owned by Scott Sender. Scott Sender gave the claimant a bill for his share of the expenses every month and the claimant paid his share without having any knowledge of what Brian Sender or any of his other roommates were paying for living expenses or if Brian Sender specifically was making any payments to his brother. The claimant moved in with his fiancée January 15, 2011, but agreed to pay Scott Sender \$400.00 a month for the remainder of the year he had agreed to live there or until Scott Sender found another roommate to replace him. The six bank transactions the claimant engaged in with Brian Sender occurred between March 25 and August 17, 2011. There is no allegation of theft or fraud against the claimant but he was discharged because the employer has a zero tolerance for violations of the Code of Ethics.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying misconduct. 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 substantial and 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). While the claimant violated the employer's Code of Ethics policy by engaging in financial transactions with Brian Sender, who could technically be considered his roommate, the claimant had not lived with Brian Sender or knowingly shared any living expenses with him since January 15, 2011, when he moved in with his fiancée. Additionally, he paid his share of rent and expenses to Brian Sender's brother Scott Sender, who was the home owner. There is no evidence of fraud, theft or financial wrongdoing with regard to these transactions. Disqualifying misconduct requires intentional wrongdoing. In this case, the evidence does not establish that the claimant knowingly violated the employer's policy. While not condoning the claimant's actions because as a branch manager he had a higher duty to know and follow the Code of Ethics, the administrative law judge cannot conclude the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The October 5, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs