

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE M QUINT
Claimant

APPEAL NO. 10A-UI-09366-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITIZENS STATE BANK
Employer

**OC: 05/30/10
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated June 28, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 17, 2010. Claimant participated personally. The employer participated by Audrie Savage, President/CEO; Daniel Kumley, and James Gudenkauf.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jane Quint was employed by Citizens State Bank from May 17, 2005 until April 13, 2010 when she resigned in lieu of being discharged. Ms. Quint worked as a full-time assistant to James Gudenkauf and teller.

A decision was made to discharge Ms. Quint from her employment with Citizens State Bank or give her the opportunity to resign in lieu of being discharged because of numerous incidents of what the employer reasonably considered to be insubordinate conduct by the claimant.

The final incident took place when the claimant became upset when questioned by her immediate supervisor about a dispute with another bank employee or the manner that the claimant had used in assisting a customer that the other employee was waiting on. When questioned by Mr. Gudenkauf, Ms. Quint became unreasonably upset chastising her supervisor for questioning her. Ms. Quint left the premises at that time and did not return following the lunch period to count out her drawer and perform other duties that were necessary in her teller position. Claimant had contacted the company's human resource director, Mr. Kumley and had been given permission to take the rest of that afternoon off.

Prior to the final incident Ms. Quint had been verbally counseled on numerous occasions about following the directives of her supervisor and working compatibly with other employees. The claimant had failed to follow directives that had been given to her about sending photographs to adolescents, following rotating weekend scheduling and following bank requirements regarding borrowers' signatures and obtaining correct information for monetary wire transfers. The claimant had also denied having her drawer not balanced when in fact a \$6.00 error had occurred. Claimant had also been verbally warned about leaving customers' deposits in open areas.

It is the claimant's position that the employer's allegations were unfounded and that the final incident occurred because a fellow employee was upset and yelling at her resulting in Mr. Gudenkauf's siding with the other employee and "ranting" about Ms. Quint's mistake and the issue with the other employee. Ms. Quint believed that her immediate supervisor's questioning her about her attitude and demeanor was a form of "harassment."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

In this matter the evidence in the record establishes that Ms. Quint had been repeatedly verbally warned by her immediate supervisor about getting along well with other workers and conforming to bank policies and procedures. Although the claimant had received verbal warnings, Ms. Quint continued to fail to follow the required procedures and failed to follow specific directives that had been given to her by her supervisor. Claimant had issued pictures to adolescents although she had been told not to, disagreeing with weekend scheduling, processing loan documents without required signatures and making inaccurate statements about drawer shortages.

During the final incident that caused the claimant's discharge, Mr. Gudenkauf was attempting to exercise supervisory authority by questioning the claimant about her attitude and demeanor in an incident that had just occurred with another female bank employee. Although the questions were reasonable and work-related, Ms. Quint considered them to be "harassment" and displayed an insubordinate demeanor towards her supervisor during the questioning.

Based upon the previous warnings that had been served upon the claimant, Ms. Quint's conduct was a willful disregard of the employer's interests and the reasonable standards of behavior that an employer has a right to expect of its employees under the provisions of the Employment Security Act. Her resignation in lieu of being discharged was, therefore under disqualifying conditions and benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated June 28, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs