

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT GOEKEN
Claimant

US BANK NATIONAL ASSOCIATION
Employer

APPEAL 15A-UI-07236-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/15/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 19, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2015. Claimant participated. Employer participated through regional bank president David Cronk. Claimant Exhibits A through D were admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a commercial lender from April 27, 2015, and was separated from employment on May 21, 2015, when he was discharged.

In March 2015, the employer began discussions with claimant about employment opportunities. Prior to these discussions, claimant had previously worked for State Bank. During claimant's employment with State Bank, claimant and State Bank signed a written agreement regarding claimant's future employment opportunities with other employers. Claimant Exhibit C. Claimant provided the employer with a copy of Claimant Exhibit C. Claimant Exhibits A and D. The employer reviewed Claimant Exhibit C and understood the potential issues that may occur if claimant was hired. Claimant Exhibit A. There was some discussion between the employer and claimant regarding claimant reaching a settlement agreement with State Bank, but no settlement agreement was ever reached. The employer hired Claimant in April 2015 despite Claimant Exhibit C still being in place. On May 5, 2015, the employer was put on notice by State Bank that a lawsuit may be forthcoming if resolution regarding claimant's employment with the employer is not resolved by May 14, 2015. Claimant Exhibit D. The initial deadline was extended to May 21, 2015; however, the parties were not able to reach a resolution and claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

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

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Claimant was upfront with the employer about his agreement with State Bank. Claimant Exhibits A and D. Claimant provided the employer with a copy of the agreement prior to the employer hiring him. Claimant Exhibit A. The employer chose to hire claimant despite claimant's agreement with State Bank. The employer then chose to discharge claimant because State Bank believed claimant's employment with the employer violated the agreement. No other misconduct is alleged. The employer has not met its burden of proof to establish disqualifying job misconduct. Benefits are allowed.

DECISION:

The June 19, 2015, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs