

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN D USHER**  
Claimant

**APPEAL NO. 11A-UI-02728-L**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBL FINANCIAL GROUP INC**  
Employer

**OC: 01/16/11  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant Shawn Usher, also known as Shawna Bass, filed a timely appeal from the March 3, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on April 7, 2011 in Des Moines, Iowa. Claimant participated. Employer participated through business director, Jake Rojohn and human resources specialist, Joelle Knowler. Employer's Exhibits 1, 1A, 2, 3, and 4 were admitted to the record. Claimant's Exhibits A through D were admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time senior commercial underwriter through January 18, 2011 when she was discharged. On January 12 at 11:00 a.m. Rojohn told her by e-mail to contact agent Jason Fleming in Minnesota to get information for some quotes. About a half hour later she reported to Rojohn's office and questioned him about what to do if the information came in and did not match the information the agent provided earlier. Rojohn said he would back her. She offered copies of the existing quotes from that information but he told her to go over the information with Fleming on the phone to make sure he understood how that worked. She called Fleming that evening and they verbally walked through each quote she had provided earlier. Fleming did not indicate he was upset for any reason with claimant during their conversation but reported to Rojohn on January 13 that claimant started asking him questions and he stopped listening when she asked his age because he was offended. Claimant did not ask Fleming his age or imply that his age was an issue but had asked Fleming to trust her experience to give her information on loss runs for a commercial apartment. After she explained this to Rojohn he said he would call Fleming and work it out. Fleming did not participate in the hearing and the employer did not offer any written statements from Fleming about the issue.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

Inasmuch as claimant adequately rebutted employer's final incident allegation about the interaction with Fleming, employer has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. Employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The March 3, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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