

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ASHLEE M MUMFORD
Claimant

FIRST STATE BANK
Employer

APPEAL NO. 20A-UI-12498-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/03/19
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

Ashlee Mumford filed a timely appeal from the September 28, 2020, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on May 4, 2020 for violation of a known company rule. After due notice was issued, a hearing was held on December 9, 2020. Ms. Mumford participated. Molly Jarvis represented the employer and presented additional testimony through Mike Culver. Exhibit A was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ashley Mumford was employed by First State Bank as a full-time Universal Banker from March 16, 2020 until May 4, 2020, when Molly Jarvis, President, and Mike Culver, Executive Vice President, discharged her from the employment for violating the employer's Code of Conduct rule regarding confidentiality. The employer provided the Code of Conduct to Ms. Mumford at the start of the employment and reviewed the Code of Conduct with her at that time. The Code of Conduct stated that maintaining confidentiality was of the utmost importance at the bank. The policy required that Ms. Mumford treat as confidential any information she gained through the employment, even if it was not immediately obvious that the material was confidential. The policy required that Ms. Mumford maintain as confidential not only customer information, but information regarding others whose business involved the bank. The policy stated that any use of information obtained through the employment for personal benefit would be a breach of trust and confidentiality. The policy required that Ms. Mumford not leave such privileged information where others might access it and violate the Code the Conduct.

On May 4, 2020, Ms. Mumford violated the Code of Conduct while processing ATM deposits. In the course of performing that task, Ms. Mumford came across a check a business had issued to her ex-husband. Ms. Mumford's ex-husband is significantly behind in his child support

obligation. Ms. Mumford did not know the name or address of her husband's presumed employer until she came across the check in the course of performing her work duties. Ms. Mumford desired the information for purposes of enforcing the child support obligation. Ms. Mumford wrote on a Post-It note the name, address and phone number of the check payor, her ex-husband's presumed employer. Ms. Mumford intended to forward that information to the Iowa Child Support Recovery Unit. At the time Ms. Mumford lifted the information from the check, she was aware that her conduct violated the bank's Code of Conduct. Ms. Mumford did not count on having to depart from the workplace early that day.

Shortly after Ms. Mumford copied down the information from the check, her hair stylist sent her a text message alerting her to the fact that she might have been exposed to COVID-19. Ms. Mumford promptly notified the employer and the employer promptly directed her to exit the workplace while the employer determined what to do next about the COVID-19 issue. Ms. Mumford made no mention of the information she had lifted from the check. Another employee was assigned to finish processing the ATM deposits, came across the Post-It note and brought it to Mr. Culver's attention. Shortly after Ms. Mumford left, she called with a concern that she had left the Post-It note out on her work space and to request that the employer provide her with the information contained on the Post-It note. The employer declined to do so until the employer looked further into the matter. The employer determined the deposited ATM check to be the source of the information on the Post-It note. Ms. Jarvis and Mr. Culver then called Ms. Mumford to address the matter. Ms. Mumford went into detail about the unpaid child support obligation and her desire to use the information to enforce the child support obligation. When asked by the employer, Ms. Mumford conceded that she was aware at the time she lifted the information from the check that the conduct likely violated the employer's confidentiality policy and would place her employment in jeopardy. The employer discharged Ms. Mumford from the employment at that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*


The evidence in the record establishes a discharge for misconduct in connection with the employment. Ms. Mumford dissembled at the appeal hearing when she initially testified to a lack of understanding regarding the Code of Conduct policy, to not receiving the policy, and to intending to check with the employer see whether it was okay to use the information she lifted from the check to enforce the child support obligation. Ms. Mumford even dissembled on whether that was indeed her plan, when the intent of the conduct is readily evident. The weight of the evidence establishes that Ms. Mumford knowingly and intentionally violated the employer's Code of Conduct confidentiality policy when she elected to take steps to personally benefit from privileged information she gained through the employment. The conduct

substantially undermined the trust the employer needed to be able to place in Ms. Mumford in the context of the banking enterprise. In others words, it demonstrated a willful and wanton disregard of the employer's interests. Ms. Mumford appears to argue in her appeal letter that it could not have been misconduct because she did not get away with it, but that is not the standard. The act was undertaken with disregard of the employer's interests and policy. Whether it was successful is beside the point. Ms. Mumford is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Mumford must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The September 28, 2020, reference 03, decision is affirmed. The claimant was discharged on May 4 2020 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant was available for work, whether the claimant was partially unemployed, whether the claimant accurately reported wages, and whether the claimant was overpaid benefits for the weeks between March 15, 2020 and May 2, 2020. The remand may also address whether the claimant was able to work and available for work during the period that began May 3, 2020.



James E. Timberland
Administrative Law Judge

December 17, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**