

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERYL M MCATEE
Claimant

APPEAL NO. 10A-UI-15854-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBL FINANCIAL GROUP INC
Employer

OC: 10/17/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

An appeal was filed on behalf of Sheryl M. McAtee from an unemployment insurance decision dated November 9, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on January 5, 2011. Karin R. Zeigler, Attorney at Law, appeared on behalf of the claimant. Ms. McAtee testified as did Paulette Flug. Claimant Exhibits One and Eight were admitted into evidence. Paul S. Swinton, Attorney at Law, appeared on behalf of the employer, FBL Financial Group, Inc. Sara Prehm and Nancy Doll testified. Employer Exhibits E, N, C, B, K, G, D, L, A-1 through A-7, I and F were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sheryl M. McAtee was employed by FBL Financial Group, Inc. (FBL) from April 24, 1995 until she was discharged October 18, 2010. She last worked as product communications manager. Her direct supervisor was Sara Prehm, the product communications coordinator. On the morning of October 14, 2010 Ms. McAtee and Administrative Assistant Stacy Hayes were called to a meeting by Ms. Prehm. During that meeting Ms. Hayes stated that A. M. Best was about to raise its rating of FBL Financial Services from B++ to A-. Ms. Prehm quickly spoke up and stated that that information was not yet public. It was still confidential, and Ms. Hayes was not authorized to tell Ms. McAtee. Ms. Prehm referred to the information as “strictly confidential,” and stated that the information was not to be disclosed to anyone outside of that room. Ms. McAtee was taking notes during the meeting. She heard Ms. Prehm say that the information was strictly confidential but did not hear her say that the information could not be shared outside the room. Immediately after the meeting, Ms. McAtee sent an email to Ms. Prehm, Michael Sarcone, and Beth Pargulski. The email made a specific reference to the rating increase. Mr. Sarcone, a company employee who was

not in the meeting, and Ms. Pargulski, an independent contractor who worked on various projects for the company, would not have known of the rating increase.

Ms. Prehm immediately responded to Ms. McAtee, Mr. Sarcone and Ms. Pargulski stating that the information was confidential. Ms. Prehm then notified her direct supervisor, Nancy Doll, the vice president of marketing communications.

A. M. Best announced its rating increase on October 15, 2010. On the same day, Ms. Doll determined that Ms. McAtee must be discharged because of her release of confidential information. Scott Shuck, the direct supervisor of Ms. Hayes, reached the same conclusion and terminated Ms. Hayes' employment. Ms. Doll discharged Ms. McAtee on the following Monday, October 18, 2010. In the discharge interview Ms. Doll noted that Ms. McAtee had released the information prior to FBL's 8-K filing with the Securities and Exchange Commission, a document by which the company announced the rating increase. Ms. McAtee came away from the meeting with the understanding that FBL would be required to make an 8-K filing because of the premature disclosure. Such a filing was not required.

Company policy stresses the proper treatment of confidential information. Its code of business ethics and conduct includes information about the company's financial condition that is not publicly known in its definition of confidential information. Employees are required to take on-line training on the code of business ethics and conduct from time to time. Ms. Doll would have been notified by the company had Ms. McAtee failed to take the required on-line training.

In reaching the decision to discharge Ms. McAtee, Ms. Doll also considered a warning given to Ms. McAtee on November 1, 2004 concerning release of confidential information. That warning stated that she would be discharged upon the next such infraction.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. 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.

Ms. McAtee acknowledged in her testimony that she had heard Ms. Prehm state that the information was highly confidential. The evidence establishes that immediately after the meeting Ms. McAtee disclosed the information to two individuals who had not been in the meeting. Ms. McAtee did not contradict the employer's evidence that she had taken the on-line training on business ethics. She did not contradict the evidence that she had received a prior warning for a similar offense.

Whether or not the information was disclosed maliciously, that is, in an attempt to harm the company, it was disclosed deliberately, in violation of company policy. The administrative law judge concludes that the evidence is sufficient to establish willful misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated November 9, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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