

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA CAMPBELL
Claimant

APPEAL NO: 16A-UI-11512-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

OC: 09/18/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 14, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2016. The claimant participated in the hearing. Theresa Murray, Branch Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales and service manager for US Bank National Association from June 2, 2008 to August 24, 2016. She was discharged for backdating safety deposit box contracts June 28 and July 6, 2016.

On June 28, 2016, two employees informed Branch Manager Theresa Murray the claimant backdated a safety deposit box contract to June 2, 2016, the day the box contract was signed. Ms. Murray notified District Manager James Thomas and he referred her to the retail operations manager. Ms. Murray also notified human resources of the situation in an email dated July 5, 2016. On July 6, 2016, Ms. Murray was told the claimant backdated another safety deposit box contract to June 20, 2016. On July 18, 2016, Mr. Murray, Mr. Thomas and the claimant met to discuss the situation. On July 29, 2016, Ms. Murray and the claimant participated in a conference call with human resources to further discuss the claimant's backdating of the two safety deposit box contracts. On August 24, 2016, the employer terminated the claimant's employment. The claimant had not received any previous verbal or written warnings during her employment with the bank.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Iowa Admin. Code r. 871-24.32(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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant did violate the employer's policy in backdating two safety deposit contracts, one on June 28 and another on July 6, 2016. The employer became aware of the first incident June 28, 2016, but did not talk to the claimant about the issue because it wanted to explore its options first. Ms. Murray notified the district manager and human resources but the employer did not even meet with the claimant until July 18, 2016. The employer met with the claimant again July 29, 2016, but did not terminate the claimant's employment until August 24, 2016.

While the claimant violated the employer's policy, the employer was aware of the situation for eight and one-half weeks before taking disciplinary action against the claimant in terminating her employment. Because the employer waited so long to discharge the claimant, her violations of policy June 28 and July 6, 2016, cannot be considered current acts of misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 14, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs