

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L TAYLOR
Claimant

APPEAL NO. 12A-UI-05580-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

OC: 04/15/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jamie Taylor, filed an appeal from a decision dated May 7, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 6, 2012. The claimant participated on her own behalf and with Gail Allison.

The employer, US Bank National Association, provided a telephone number to the Appeals Section. That number was dialed at 8:00 a.m. The phone rang more than ten times and no one answered. By the time the record was closed at 8:14 a.m. the employer had not contacted the Appeals Section and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jamie Taylor was employed by US Bank National Association from August 15, 2008 until April 19, 2012 as a full-time personal banker. The employer's rules prohibit one banker from using the computer terminal of another banker. Everyone was aware of this policy but it was never enforced. All employees, including supervisors and managers, used the terminals of other employees from time to time when it was inconvenient to use their own terminals. No warnings were issued to the claimant either personally or as part of a group.

Ms. Taylor was discharged on April 19, 2012 for using the terminal of another employee in January 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The claimant was discharged for violating company policy by using the computer terminal of another employee. Ms. Taylor has asserted that "everyone" did this even though it was known to be against policy. The claimant had never received any prior warnings.

The employer did not participate to give testimony regarding why there was a three-month delay between the alleged incident and the discharge. Under the provisions of the above Administrative Code section, there must be a current, final act of misconduct which precipitates the discharge in order for the claimant to be disqualified. Without a showing of good cause for the delay, disqualification may not be imposed.

DECISION:

The representative's decision of May 7, 2012, reference 01, is reversed. Jamie Taylor is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs