

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOYCE A RAHM**

Claimant

**APPEAL NO. 08A-UI-04923-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST AMERICAN BANK**

Employer

**OC: 04-06-08 R: 01  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 15, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 9, 2008. The claimant did participate. The employer did participate through Carla Shimon, Teller Supervisor; Martha Gleason, Chief Human Resources Officer, and (representative) Pam Hanson, Vice President of Human Capital. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a financial services representative (teller) full time beginning October 10, 1988 through April 4, 2008 when she was discharged.

As part of her job responsibilities the claimant was periodically required to answer an e-mail from a training coordinator that posed questions about particular bank procedures. An e-mail was sent to the claimant in each December 2007 and February 2008. She did not open the e-mail or respond to it in a timely manner because she had a conflict with the person (hereafter referred to as MBW) who sent the e-mail. Prior to December 2007 an assistant to MBW had sent the e-mails to all of the financial services representatives, including the claimant. Prior to December 2007 the claimant had opened the e-mails and had responded to the questions posed therein. The claimant knew that it was part of her job responsibilities to respond to the questions posed in the e-mail. Ms. Shimon, the claimant's direct supervisor, asked the claimant in January to respond to MBW's e-mail of December 2007. The claimant told her she would not do it, but would just take a deduction from her ranking score for her failure to answer those questions. Ms. Shimon told her later that it was unacceptable for her to opt out of answering the questions.

Ms. Shimon discovered in late February 2008 that the claimant had not answered either the December 2007 or February 2008 procedural questions e-mails. The claimant told Ms. Shimon

that she would not open or respond to e-mail sent by MBW because she believed MBW had threatened her with physical harm in July 2005.

When Ms. Shimon learned that the claimant believed MBW had threatened her, she began an investigation by contacting her Supervisor, Virginia Jorgensen, Pam Hanson and Martha Gleason. Both Ms. Gleason and Ms. Hanson work in a different city at a different branch location than the claimant. Eventually Ms. Gleason took over the investigation. Both Ms. Gleason and Ms. Hanson learned of the claimant's allegation of threats from MBW on February 25, 2008.

In July 2005 MBW was working at the local Fort Dodge office with the claimant and others helping out when the tellers went on break. The claimant was getting ready to go to lunch, MBW did not have the opportunity to open a new drawer, so she asked the claimant to count down her drawer and then MBW would use the drawer while the claimant was at lunch. When the claimant returned from lunch the drawer would be counted down again in order to insure that no shortages caused by MBW using her drawer were attributed to the claimant. MBW also told the claimant that she would be responsible for any shortages in the drawer. This was and is an accepted practice for more than one teller working out of a drawer.

When MBW proposed that she use the claimant's drawer, the claimant refused to allow her to do so. The claimant alleges that MBW yelled at her, threatened her and shook her fist in her face. The claimant did not complain to her supervisor, any other bank manager or anyone from the human resources department until two and one-half years later when she was being required to open e-mails from MBW. MBW did not work in the same physical branch office as the claimant. The event was witnessed by three other tellers; Iris Hazel, Joy Traster and Missy Nelson.

On March 3, 2008 Ms. Gleason interviewed MBW who denied ever threatening the claimant or any behavior that could be interpreted as threatening. MBW said the claimant refused to speak to her about the incident at the time it occurred and would not let MBW explain why the procedure was acceptable company practice. On March 20, after driving to Fort Dodge from Ames, Ms. Gleason interviewed each of the three tellers who witnessed the incident back in July 2005. Ms. Gleason hoped to interview the claimant on March 20, but the claimant was not working. Ms. Gleason returned to Fort Dodge on April 1.

All of three of the tellers interviewed by Ms. Gleason, supported MBW's version of the events. The claimant alleges that she tried to tell Ms. Shimon and Virginia Jorgenson about the incident in January 2006 during her performance evaluation, but they each would not listen to her and just got up and walked away.

On April 1 Ms. Gleason, the claimant and another bank manager met to discuss the situation. At that meeting Ms. Gleason proposed a meeting including MBW and others to discuss the situation and to try and iron out any differences that that claimant had. The claimant flatly refused to meet with MBW no matter what the context or meeting situation and again reiterated that she would not open any e-mail from MBW nor respond to any e-mail from MBW. The claimant was told that by refusing to open e-mail from MBW she was engaging in insubordination and placing her job in jeopardy. The employer gave the claimant time to think about their proposed meeting. The claimant again refused to meet with MBW and refused to open or respond to e-mail from MBW. On April 4 the claimant was discharged for insubordination, refusing to open and respond to e-mail from MBW.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

The claimant never complained about MBW's conduct until over two years after it occurred. The administrative law judge is not persuaded that she complained during her January 2006 performance evaluation and that both Ms. Shimon and Ms. Jorgensen walked away from her. When the claimant did complain to Ms. Shimon in February 2008, Ms. Shimon acted immediately to notify upper management. There is no reason she would have behaved any differently if she had been notified in January 2006.

The claimant did not establish that MBW physically harmed her or threatened her. All of the individuals who witnessed the events concurred with MBW's version of events, not the claimant's. The employer wanted the claimant to meet, with others present, with MBW to

discuss the situation and to work toward a resolution. The claimant would have been safe in a meeting where others were present, yet she refused to meet.

The claimant did not complain about the alleged harassment for over two years, until she was being asked to open and respond to e-mail sent by MBW. The e-mails had previously been sent by MBW's assistant, but in December 2007 and thereafter they were sent by MBW herself. MBW does not work in the same physical location as the claimant. The e-mails are a form sent to every single teller, not solely to the claimant. The claimant's explanation that she feared MBW does not offer any good explanation as to why she would not open an e-mail from her. Opening an e-mail that was threatening would only serve to provide the claimant with evidence of her allegation. The claimant's refusal to open an e-mail under these circumstances was unreasonable under the circumstances and is insubordination sufficient to establish disqualifying misconduct. The employer gave the claimant a chance to change her mind on April 1, but then the claimant again reiterated that she would continue to engage in conduct she had been told was insubordinate. The claimant's discharge was for misconduct. Benefits are denied.

The employer learned of the insubordination on February 25 and because the claimant worked in a different city than the investigator the employer's investigation took additional time. Ms. Gleason had to drive from Ames to Fort Dodge to interview the claimant and other witnesses. The employer's investigation was timely considering the physical location of the claimant. Additionally, the claimant's insubordination was an ongoing event as she expressed on April 1 that she would not open any or respond to any e-mails of MBW. The claimant was discharged for a current act of misconduct.

**DECISION:**

The May 15, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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