

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN J MC KENZIE
Claimant

APPEAL NO: 11A-UI-06556-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

**OC: 04/17/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 10, 2011 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Brian Davis, the branch manager, and Angie Imming appeared on the employer's behalf. Michael McKenzie, the claimant's husband, and Jolene Hilligren, the claimant's daughter, observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 1998. She worked as a full-time teller. The claimant understood the employer's policy did not allow employees to provide information about customers to people who did not work for the employer.

Before April 18, 2011, the claimant's job was not in jeopardy. On April 18, a bank customer hit the claimant's daughter's car in the bank's parking lot. Hilligren was in her car when the customer hit her car. The customer refused to give Hilligren his name or phone number.

The claimant found out who this customer was and asked her supervisor for his phone number. The claimant supervisor looked up the customer's phone number and gave it to the claimant. The claimant understood her supervisor knew and understood the claimant would give the customer's phone number to her daughter for insurance purposes. Hilligren provided the customer's phone number to her insurance company.

The customer complained that someone at the bank gave out his personal information. The customer told the employer he had an unlisted phone number. When asked, the claimant admitted she obtained the phone number from her supervisor and gave the number to her

daughter. The employer discharged the claimant on April 19, 2011, for violating the employer's policy – giving out customer information to a person who does not work for the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's supervisor did not participate at the hearing. Even though the supervisor looked up a customer's number and gave it to the claimant, the evidence does establish if she knew the claimant was going to give the phone number to her daughter and if she knew, it is not known if the customer's phone number was unlisted. It is obvious the claimant was not thinking about the employer's policy when she gave her daughter the customer's phone number from information the employer had on the customer. When the customer refused to give his name or phone number to Hilligren and drove off leaving Hilligren's car damaged (\$600.00), it is understandable why the claimant gave the customer's phone number to her daughter. The claimant used poor judgment by giving her daughter a customer's phone number but the customer did not act responsibly after he hit a vehicle.

The employer established justifiable business reasons for discharging the claimant. Given the circumstances of this case, this isolated incident does not rise to the level of work-connected misconduct. As of April 17, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's May 10, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 17, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css