

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY L GLANDER
Claimant

APPEAL NO. 11A-UI-14809-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAGLE ROCK CREDIT UNION
Employer

**OC: 10/16/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 8, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 12, 2012. Claimant participated. Eymard Wanzeck was a witness for the claimant. Employer participated by Angela Drury, chief operating officer of 1st Gateway Credit Union. The record consists of the testimony of Angela Drury; the testimony of Judy Glander; the testimony of Eymard Wanzeck; and Employer's Exhibits 1-2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as the manager of Eagle Rock Credit Union, the named employer in this case. There is a long complicated history concerning the employer, which had its origins as a credit union for employees of Champion Packaging. The claimant started working for the employer in either 1975 or 1976 as a part-time employee. She was the only employee and did "everything" that was necessary including loan processing and deposits. The employer had a Board of Directors, which consisted of members who held full-time jobs. The claimant also assumed the job of manager of what was called the DePaco Credit Union in March 1989. DePaco and Eagle Rock decided to merge their operations. The claimant was the individual who was working on the merger. The effective date of the merger was September 1, 2011, although the final papers were not filed until September 21, 2011. At the time of her termination, the claimant was the manager of this newly merged entity, which retained the name Eagle Rock Credit Union.

Credit unions are subject to regular audits of their records by the Superintendent of Credit Unions for the state of Iowa. The claimant was notified in late September 2011 that the state

would be conducting its June 30, 2011, examination starting on October 3, 2011. Normally these audits took three or four days to complete. This audit lasted for three weeks. The claimant asked what was taking so long and she was informed by the auditors that each loan was being examined.

On or about October 19, 2011, the claimant was asked to bring in the lap top computer that she used at home. The claimant had the lap top at home because she had a Qwest setup for internet service and the office did not. The claimant brought the lap top computer in and gave it to the auditors. On October 20, 2011, the auditors met with the board of directors on October 20, 2011. The auditors informed the board of directors that the Eagle Rock credit union was in dire financial condition.

On October 21, 2011, the claimant was served with a summary cease and desist order. She was required to cease and desist from all activities as an employee, officer and director of Eagle Rock Credit Union. A hearing was set for October 28, 2011. The claimant did not attend the hearing. She was deemed to have consented to the final order. (Exhibit 1) In the final order to cease and desist, the superintendent of credit union stated: "The Superintendent further finds that the activities of Glander in conducting the business of Eagle Rock are unsafe and unsound, and are likely to have cause substantial dissipation of the assets and earnings of the credit union, seriously weakened the condition of the credit union and seriously prejudiced the interests of its members." (Exhibit 1)

Another meeting was held with the board of directors of the credit union on October 26, 2011. The board members indicated that they wanted to resign immediately and to merge with another credit union—1st Gateway Credit Union. (Exhibit 2) The claimant employment was terminated formally by the board of directors at this meeting. The final merger occurred on January 1, 2012. Eagle Rock ended the year of 2011 with a negative balance of \$160,000.00.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Wanton carelessness or neglect and the deliberate violation or disregard of the employer's standards of behavior is misconduct. Unsatisfactory job performance is not misconduct unless there is a pattern of conduct that amounts to wanton carelessness or negligence. The employer has the burden of proof to show misconduct.

In this case, the claimant was terminated after she was served with a summary cease and desist order by the superintendent of credit unions of the state of Iowa. The claimant had been found to have granted loans outside the legal authority given to her by the board and to have granted unsecured loans. Loans that had been granted were not being repaid. The claimant had not balanced her cash and did not even know the amount of the loans that were owed by the credit union. The administrative law judge concludes that the claimant's actions were more than simple negligence in isolated situations. There was a pattern of sloppy management and disregard of board of director's instructions that left the credit union in a precarious financial state.

In order to perform her job, the claimant had to be employable by the employer. As of October 21, 2011, the claimant had been, in effect, suspended from working for Eagle Rock. The situation is akin to a truck driver's license suspension or the suspension of a gaming license by the state of Iowa. The claimant was terminated after the summary cease and desist order was given to her on October 21, 2011. The administrative law judge concludes that the claimant's ability to work in the credit union was ended due to her improper conduct as an officer and employee of the employer. The employer has met its burden of proof to show misconduct. Benefits are denied.

DECISION:

The decision of the representative dated November 8, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs