

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEISHA WOODS

Claimant

APPEAL NO: 10A-UI-08822-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KERNDT BROTHERS SAVINGS BANK

Employer

OC: 05-09-10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 11, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 28, 2010, and continued on August 6, 2010. The claimant participated in the hearing with former Senior Vice-President of Credit Administration Rich Arneson and was represented by Attorney Jeffrey Clements. Jeff Steffensmeier, Market President; Becky Seitz, Auditor/Compliance Officer; and Becky Jones, Human Resources Director; participated in the hearing on behalf of the employer with Attorney Sharon Malheiro.

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 loan administrator for Kerndt Brothers Savings Bank from July 14, 2004 to May 13, 2010. On May 3, 2010, the claimant obtained a check payable to her spouse, which both she and her husband endorsed, and converted \$300.00 into cash and the remainder into a cashier's check. She did so because she had several bills coming due and wanted to make it more difficult for her to spend the money on other items rather than the bills as she planned. On May 5, 2010, her bills started coming due so the claimant brought the cashier's check back to the bank/employer, withdrew \$120.00 in cash and deposited the rest of the money in her joint savings account. On May 11, 2010, the employer discovered the situation and President James Kerndt and an assistant cashier discussed what happened with the claimant. The employer was concerned because the claimant gave the appearance by converting the original check to the cashier's check that she was trying to keep it out of her account and keep it from being traced back to the original check payable to her husband. The employer believed the claimant was layering or structuring the transaction to cover the trail of the check because the original check was never deposited into her joint account. This was not a typical transaction and there are regulations prohibiting layering. Because the claimant did not deposit the check into her account immediately it was deemed a suspicious transaction. The normal course of business would have been to deposit the check into her joint account and

then get the cashier's check. Approximately one year earlier the bank lost \$147,000.00 on a loan made to the claimant and her husband for their hog farming business. The loan was going into a workout agreement and the bank was concerned about how the claimant and her husband were spending the proceeds from hog sales as the bank expected any monies to go back into the farm. Senior Vice-President of Credit Administration Rich Arneson investigated the situation to be sure the funds were not being diverted to other uses but did not find that the claimant was doing anything illegal. The claimant provided the needed documentation and Mr. Kerndt and Mr. Arneson were satisfied. The claimant had asked for a cashier's check from hog sales proceeds because she did not want to be tempted to spend the money on anything else and Mr. Arneson found that to be a reasonable and credible explanation. Mr. Arneson did not warn the claimant about her use of the cashier's check or about layering or structuring. The employer terminated the claimant's employment May 13, 2010, because the transaction was suspicious.

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 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.

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). While the claimant's transaction May 3, 2010, may have been unorthodox in the banking world and thus suspicious to the employer, the employer has not established that the claimant did anything illegal. Although the employer found the claimant's actions suspicious it did not present any evidence indicating that her explanation of getting a cashier's check and some cash from the check she presented to the cashier to prevent herself from spending the money on anything but bills that were coming due was not credible. The employer also stated it would have completed the same transaction for any other customer. Additionally, the claimant did the same thing approximately one year earlier and was not warned about her actions after she explained her reasoning for her behavior to Mr. Arneson and Mr. Kerndt. Consequently, the administrative law judge finds the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 11, 2010, reference 01, decision is reversed. 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/css