

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA K PORTILLO
Claimant

AVAILA BANK
Employer

APPEAL 20A-UI-11103-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On September 10, 2020, the claimant filed an appeal from the September 1, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2020. Claimant participated. Employer participated through human resource manager K'Lynn Ludwig. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 14, 2018. Claimant last worked as a full-time universal banker I. Claimant was separated from employment on May 22, 2020, when she was terminated.

As part of her job, claimant was required to process deposits for customers. Claimant was required to pull up the customer's bank account and verify the customer's name and address before depositing the funds. Employer prohibited cashiers from filling out deposit slips ahead of time.

On March 18, 2020, employer initiated a corrective action against claimant for a series of mistakes involving entering deposits into the wrong bank accounts. Claimant failed to properly verify account information and completed deposit slips ahead of time, which resulted in several deposits being made in the wrong accounts. Several customers became very upset about the mix ups. Employer informed claimant that it was going to review her work at 30, 60, and 90 day intervals for improvement and that failure to follow employer's procedures could result in termination.

On April 1, 2020, claimant's doctor increased the dosage on one of the pain medications claimant takes regularly for a medical condition. On April 14, 2020, claimant informed her

manager, Cassie, of the medication change and that she thought it had interfered with her ability to remember new processes she was learning. Claimant informed Cassie she was going to ask her provider to decrease the dosage.

On April 17, 2020, claimant deposited a check into the wrong customer's account. The customers had similar names, but had a different address and home bank location. Claimant did not verify the address of the customer, which would have prevented this from happening. Claimant knew about the verification procedure and had practiced it for a long time before this occurred.

On May 21, 2020, the customer reviewed their bank statement and found the deposit was missing. The customer reported the missing deposit to the bank. Claimant's manager reviewed the documentation and learned claimant made the mistake.

On May 22, 2020, employer terminated claimant's employment.

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, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

"[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability.

Here, employer has established that claimant made mistakes to the point that could be characterized as gross negligence. While the claimant may have felt some foggy due to medication issues, the last mistake was a result of claimant's failure to follow a clearly laid out procedure meant to prevent exactly the action that occurred. Claimant did not establish that her failure to follow the procedure was caused by the medication change.

Employer has established claimant was terminated for gross negligence that amounts to misconduct.

DECISION:

The September 1, 2020, (reference 02) unemployment insurance 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.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
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Fax (515)478-3528

November 4, 2020
Decision Dated and Mailed

cal/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.