

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL E REED

Claimant

APPEAL NO. 12A-UI-02015-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHECK INTO CASH OF IOWA INC

Employer

OC: 01/08/12

Claimant: Respondent (1)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 20, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 21, 2012. Claimant participated. The employer participated by Kelsie Sturm, the district manager. The record consists of the testimony of Crystal Reed; the testimony of Kelsie Sturm; and Employer's Exhibits 1-6.

ISSUE:

Was the claimant discharged for a current act of 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 employer is a pay day advance loan company. The claimant worked at the office located in Denison, Iowa. The claimant was hired on February 2, 2010. She was the center manager and a full-time employee. Her last day of work was January 12, 2012. She was terminated on January 12, 2012.

The incident that led to the claimant's termination occurred on December 21, 2011. The claimant attended a district meeting. After the meeting, another employee wanted to stop and see an old district manager, who was no longer with the employer. The claimant's car had been in an accident and she did not have a ride. She was present when the other employee was talking to the old manager. The claimant did not say a word.

The vice president made the decision to terminate the claimant for what he believed was breach of confidentiality. The employer has a strict written policy that prohibits discussing company business with individuals who are not with the company.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

There is no evidence of a current act of misconduct in this record. Even assuming that what the claimant did on December 21, 2011, is misconduct, the claimant was clearly not terminated for a current act of misconduct. The actual termination did not take place until January 12, 2012. Ms. Sturm did not know when the vice president, the individual who made the decision to terminate the claimant, found out about the alleged confidential disclosure. She was simply

asked to implement the decision, which she did. Twenty-two days elapsed between incident and termination.

In determining whether a discharge is for a current act of misconduct, a rule of reason is applied. The issue of "current act" is determined by looking to the date of the termination, or at least of notice to the employee of possible disciplinary action, and comparing this to the date the misconduct first came to the attention of the employer. The vice president did not testify on when he found out about the meeting or how. The only evidence the administrative law judge can go by is the date of the alleged incident and the date of termination. A lapse of twenty-two days means that the claimant did not get terminated for a current act of misconduct.

The administrative law judge also has serious reservations about whether the claimant was indeed terminated for misconduct. Simply being present when another employee does something improper is not misconduct per se. The claimant testified she did not say a word at this meeting. No one else who was present at the meeting testified and therefore the employer's contention that the claimant breached confidentiality is an allegation without a scintilla of proof

The employer has not shown that the claimant was discharged for a current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 20, 2012, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css