

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLYNN A OCHOA
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 21A-UI-21310-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/01/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 7, 2021 (reference 02) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon the claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on November 18, 2021. The claimant participated personally. The employer participated through witness Ray Cramer and was represented by John Soete. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-21308-DB-T.

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 was employed full-time as account resolution specialist. She began working remotely from her residence in May of 2020 through July 23, 2021. Claimant's job duties included using the employer's computer system to answer inbound calls and to make outbound client calls.

On January 20, 21, 25, 26, 27, 28 and 29, 2021, the claimant reported on her timecard that she had eight hours each day of being unable to work due to computer issues and/or not having a working computer or monitor. Claimant was instructed by her supervisor to use the non-routine event code when logging the hours for each day. Claimant again logged 8 hours for each day on February 3, 8, 9, 10, 11, and 12 of non-routine event codes because she was unable to work due to computer issues or not having a computer.

The employer conducted an investigation beginning in May of 2021 surrounding whether the claimant falsified her timecards because she did have access to working computers. Claimant was interviewed about whether she had received the six computers mailed to her and whether she had returned all of the employer's property when she came back to working in the office on July 23, 2021. Claimant was discharged on August 6, 2021 because the employer believed that the claimant did have access to a working computer for each of the days she reported in

January and February that she was unable to work due to computer issues. The claimant had received five computers over the course of three months' time. She had various issues with four of the computers and did not receive one of the computers that the employer mailed to her. Claimant kept in contact with her supervisor during the periods of time in January and February that she was unable to work due to lack of working equipment and was instructed to use the event codes she used for her timecards. Claimant was never instructed that she was limited to using only 2 days of non-routine event codes in one week. Claimant was never disciplined prior to her discharge from employment.

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. Benefits are allowed, provided the claimant is otherwise eligible.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

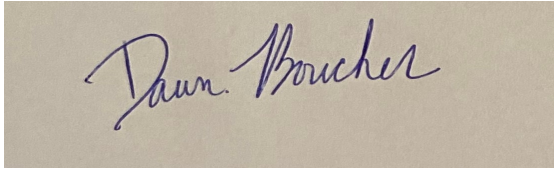
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Casper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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 does not constitute 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).

In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's testimony that she did not falsify her timecard to be credible. The claimant credibly testified that her supervisor instructed her to use that event code because she was unable to work due to lack of a functioning computer. As such, there is no final incident of substantial job-related misconduct that would disqualify the claimant from receipt of benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 7, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

November 22, 2021
Decision Dated and Mailed

db/db