

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLIN MYERS

Claimant

APPEAL NO: 14R-UI-04840-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 02/02/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2014, 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 May 30, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 home preservation specialist for Wells Fargo from April 1, 2013 to February 4, 2014. He was discharged for violation of the employer's call avoidance policy.

The employer's policy prohibits call avoidance. The claimant was signing in to voice mail without listening to any messages or taking any customer calls as a means of call avoidance.

The employer previously used green and blue time for their home preservation specialists. During green time the claimant's phone was open and he was taking calls from customers and co-workers. During blue time the claimant was allowed to work individual loans with his customers. The employer first decreased blue time and then eliminated it in October or November of 2013. The claimant believed the absence of blue time left him with less time to communicate with his customers as he was then on an open line all day.

The claimant had to be on the phone 90 percent of his time in order to meet the employer's adherence standards. If he signed into voice mail and worked on other tasks without answering

the phone, that time counted toward the 90 percent adherence mark. He used this practice throughout the month but relied on it more heavily toward the end of the month when there was more pressure to turn in submittals to the underwriters. In order to get the information required for the submittals, the claimant spent more time on the phone gathering the required documentation from customers.

After conducting an audit of the claimant's phone and voice mail usage in February 2014, the employer terminated the claimant's employment for call avoidance. The claimant received a written warning about sitting in voice mail to avoid calls August 14, 2013. He was told that practice could result in his termination and was aware his job would be in jeopardy if he continued to avoid calls.

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 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.

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).

The claimant admits that he practiced call avoidance in violation of the employer's policy. The administrative law judge does not doubt that other home preservation specialists engaged in the same behavior, especially toward the end of the month when the pressure to get submittals to underwriters was the greatest, and that with the removal of blue time it made it more difficult for the claimant and others in his position to get their jobs done. The solution, however, was not to willfully and deliberately violate the call avoidance policy.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Therefore, benefits must be denied.

DECISION:

The February 24, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css