

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LENA P SYLALOM
1801 SE KING AVE
DES MOINES IA 50320

WELLS FARGO BANK
C/O TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216 1160

Appeal Number: 05A-UI-06896-DWT
OC: 06/05/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed a representative's June 24, 2005 decision (reference 01) that concluded Lena P. Sylalom (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a temporary employee on April 8, 2004. Although the employer's records revealed the claimant signed a form indicating she had received a copy of the employer's code of ethics on April 25, 2004, the claimant did not receive a copy of the employer's code of ethics or an employee handbook during her employment. The claimant started working as a full-time mortgage assistant employee on October 2, 2004.

The claimant's boyfriend owed her money. He gave the claimant a \$100.00 check from his personal checking account (not a Wells Fargo account) on April 8, 21, and 24. The claimant deposited his checks into her Wells Fargo personal checking account and immediately withdrew \$100.00 cash from her account. The claimant's boyfriend did not have enough money in his account to cover the checks he wrote to the claimant. When his checks were returned to the employer for insufficient funds, the employer held back this amount of money from the claimant's paycheck. Even though the claimant knew her boyfriend's check(s) had been returned for insufficient funds, she continued to cash his checks and immediately withdrew the amount of the check from her Wells Fargo account.

The employer discharged the claimant on June 8, 2005, for violating the employer's code of ethics by check kiting. The facts do not indicate when the employer learned the claimant had been depositing her boyfriend's check and then withdrawing that amount from her personal checking account.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The facts indicate the claimant knew her boyfriend did not have or may not have had enough money in his account to cover checks he wrote to the claimant. Since the employer withheld money from her payroll check to cover the insufficient check amount, the claimant had no idea her job was in jeopardy.

The employer did not participate in the hearing. The evidence does not establish when the employer learned about the problem with the claimant's checking account and the checks that were returned from her boyfriend for insufficient funds. As a result, the facts do not establish that the claimant was discharged for a current act of work-connected misconduct since the insufficient checks were deposited in April and the claimant was not discharged until June 8, 2005. A preponderance of the evidence establishes that the claimant is qualified to receive unemployment insurance benefits as of June 5, 2005.

DECISION:

The representative's June 24, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons. The evidence does not establish that the employer discharged the claimant for a current act of work-connected misconduct. As of June 5, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc