

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AUSTIN D BELL**  
Claimant

**APPEAL NO. 09A-UI-10650-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**Original Claim: 06/14/09  
Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Wells Fargo Bank (employer) appealed a representative's July 14, 2009 decision (reference 01) that concluded Austin D. Bell (claimant) was qualified to receive 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 August 11, 2009. The claimant responded to the hearing notice, but was not available for the hearing. The claimant did not contact the Appeals Section on August 11 to participate in the hearing. Brian Hiveley, a supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 on November 10, 2008. The claimant worked as full-time loan servicing specialist.

At the location the claimant worked, the employer has a wellness room where employees who are not feeling well can go to and lie down. Employees must use a keycard or badge to enter the room and no one else can use a keycard or badge to enter the room while another employee is in this room. However, if a person in the room opens the door, another person can then use a keycard or badge to enter the room while an employee is in the room.

On May 19, 2009, a female employee went into the employer's wellness room. A short time later, she opened the door so the claimant could join her in the room. While both the female employee and the claimant were in the room, a third employee used her badge or keycard to enter the room. The third employee found the claimant and the female employee engaging in sexual intercourse. She immediately left and reported the incident to security.

Both the claimant and the female employee admitted they engaged in sexual intercourse in the wellness room. The employer discharged both the claimant and the female employee for using the wellness room inappropriately and engaging in intercourse at work.

The claimant established a claim for benefits during the week of June 14, 2009. The claimant has filed for and received benefits since June 14, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

The claimant's conduct on May 19 in the employer's wellness room constitutes a substantial and intentional disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. Therefore, as of June 14, 2009, the claimant is not qualified to receive benefits. The issue of overpayment is remanded to the Claims Section to determine.

**DECISION:**

The representative's July 14, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 14, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw