

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY K HESTER
Claimant

APPEAL NO. 11A-UI-10646-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 07/10/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 2, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 6, 2011. Claimant participated. Employer participated through collection supervisor John Hull, collections supervisor Shannon Bennethum, and was represented by Pamela Bailey of Barnett Associates Inc. Employer's Exhibit One was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a collector and was separated from employment on July 14, 2011. She was accused of using company programs and systems for personal use on an unknown date. On June 18 a person identifying himself as Patrick Nichols called Hull at his direct line and claimed to be the claimant's ex-boyfriend and said his current girlfriend Nicole Skinner was getting phone calls from the claimant and he believed claimant accessed Skinner's personal contact information through work. A trace on her work phone was ordered on June 21 and a log of the last 90 days of outbound calls. That investigation revealed no calls to either party. Corporate security continued their own investigation but the employer had no further information about that at hearing other than that investigation revealed that claimant used her work log on identification and accessed corporate information to look at Nicole's checking account and personal information contained therein. When confronted at the termination meeting, claimant said she did not know either Nichols or Skinner. A peer, Brian Meiners, gave her a list of accounts with both names, among others, to use as practice to use the account system HOGAN, which was separate from the mortgage account system. Supervisors encouraged them to use both systems for collection purposes. She did not contact either Nichols or Skinner. She left the list and the instructions on her desk to share with Meiners, who works a different shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988). When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In

making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The identity of the complainants is questionable as they dialed Hull's direct number to make a complaint. Claimant's statements that she did not contact the complainants were borne out by Hull's investigation of claimant's phone records. The employer did not seek a written complaint from either party, request that they appear in person to file a complaint, or provide any proof of identity that they were the account holders they claimed to be. The employer has failed to rebut claimant's statements at termination and at hearing that she did not know these individuals other than using their accounts for practice from a list given to her by a coworker. The claimant's testimony is considered credible given the employer's lack of a reasonably complete and thorough investigation. Furthermore, even had the claimant done as alleged, the employer has not established a current or final act of misconduct because the employer became aware of the issue on June 19 but did not notify the claimant of the issue until July 14, nearly a month later, and could not explain why the investigation that Hull said was complete on his end within two days, took that much longer. Accordingly, benefits are allowed.

DECISION:

The August 2, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs