

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J MC CARTHY
Claimant

APPEAL NO: 09A-UI-14717-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 08/30/09
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wells Fargo Bank NA (employer) appealed a representative's September 21, 2009 decision (reference 01) that concluded Patrick J. McCarthy (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 October 29, 2009. The claimant participated in the hearing. Chris Wheatcraft, a collection supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 October 1, 2004. In December 2008, the claimant trained to work as a loan servicing specialist. He began working this position in January or February 2009. Wheatcraft supervised the claimant.

When the employer had a change in management, Wheatcraft told all employees, including the claimant, the employer wanted to make sure all customers were treated courteously and professionally. She also indicated that upper level management was going to make blind calls to make sure no employee treated or talked to customers rudely. If employees violated this policy, the employee could be discharged for a single incident of being rude to a customer.

In July Wheatcraft had a one-on-one conversation with the claimant because his talk time average was low. The employer knew that if an employee had a tendency to disconnect calls, this would decrease the employee's average talk time.

On August 7, the claimant had a call where a customer asked what he could do after his loan modification had been denied. The claimant understood the customer wanted to keep his

property, but his financial situation had not changed. When the claimant told the customer his only option was to resubmit his loan application, the customer asked to speak to a supervisor after the claimant gave him no other options. The claimant told the customer he did not need a supervisor because the customer had already told the customer what he needed to do. The claimant believed a supervisor would give the customer the same advice. The employer's compliance policy informs employees that anytime a customer asks to speak to a supervisor, the employee is required to do this. The customer asked a second time to be transferred to a supervisor. The claimant disconnected the call.

Wheatcraft did not learn about the August 7 call until August 26 after the call had been randomly reviewed by a quality audit employee. A quality employee asked Wheatcraft to review the taped call because it appeared the claimant violated a number of the employer's policies. After reviewing the call, Wheatcraft concluded the claimant had treated the customer rudely, gave the customer inaccurate advice and denied his request to talk to a supervisor. Since it appeared the claimant disconnected the call, she ordered a tracer on the claimant's calls for August 27, 28 and 31. The results from the tracer indicated the claimant disconnected every 10 or 20 calls he had on these days.

On August 31, the employer discharged the claimant for violating the employer's requirement that a customer be transferred to a supervisor when requested, for being rude to the August 7 customer and for disconnecting calls on a regular basis.

The claimant established a claim for benefits during the week of August 30, 2009. The claimant has filed for received benefits since August 30, 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 asserted he did not know the employer's policy required him to transfer a customer upon the request to do so. Since the claimant received this information during his December training and Wheatcraft gave him a hard copy of the employer's compliance policy, the claimant knew or should have known he was required to transfer a customer to a supervisor upon the customer's request. The claimant did not have the discretion to deny a customer a supervisor even if a supervisor would give the same information as the claimant gave the customer.

The claimant also knew the employer did not allow employees to disconnect customers. Although the claimant denied he disconnected calls with the frequency the employer testified he did, the fact he had low call times and the trend the employer found in two plus days of calls, does not support the claimant's assertion. Since the employer talked to the claimant about his low call average and told him that being courteous to customers was being enforced by the employer's new management, the employer established that the claimant intentionally

disregarded the employer's interests and committed work-connected misconduct. Therefore, as of August 30, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment will be remanded to the Claims Section.

DECISION:

The representative's September 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 30, 2009, the claimant is not qualified to receive benefits. This disqualification continues until he earns ten times his weekly benefit amount. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css