

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS KLOBNAK

Claimant

APPEAL NO. 09A-UI-06614-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

Original Claim: 04/05/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Dennis Klobnak (claimant) appealed an unemployment insurance decision dated April 27, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Wells Fargo Bank NA (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2009. The claimant participated in the hearing. The employer participated through Jessica Hunter, Supervisor. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time Operations Clerk II from September 18, 2006 through April 7, 2009. He was discharged after the employer learned he had a theft conviction. The employer is required to follow the Financial Institution's Reform, Recovery, and Enforcement Act (FIRREA), which prohibits allowing employees with a theft conviction to work in a bank. The claimant pled guilty to theft in the fifth degree on February 20, 2009 for a theft in connection with Wal-Mart Stores. The claimant never disclosed this information to the employer, but the employer learned about it while doing a routine background check on April 3, 2009. When the claimant was confronted, he admitted he had a theft conviction.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 claimant was discharged on April 7, 2009 after the employer learned on April 3, 2009 he had been convicted of theft in the fifth degree on February 20, 2009. Violation of a specific work rule, even off-duty, can constitute misconduct. In Kleidosty v. EAB, 482 N.W.2d 416, 418 (Iowa 1992), the employer had a specific rule prohibiting immoral and illegal conduct. The worker was convicted of selling cocaine off the employer's premises. The Court found misconduct. In its analysis, the Court stressed the importance of a specific policy, even one which was stated only in terms of illegal or immoral conduct.

The claimant knew or should have known that he could not continue to work in a bank with a theft conviction. His criminal conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 27, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw