

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEEANN R DAKKEN

Claimant

APPEAL NO. 13A-UI-11433-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 09/08/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 10, 2013, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on November 4, 2013. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The record consists of the testimony of Leeann Dakken.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer in its card services division. She was hired in March 2008 and held a number of different jobs while working for the employer. Her last position was as a quality assurance representative. She was a full-time employee. Her last day of work was September 12, 2013. She was terminated on September 13, 2013. She was told by the employer that she was being terminated because there was a problem with her time cards for August 2013. The claimant was never given any details on what the problem entailed or exactly when it occurred despite her requests for such information.

The employer did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The employer failed to respond to the hearing notice and did not participate in the hearing. There is no evidence of misconduct. The claimant credibly testified that she did not falsify her time records in any way. Since the employer has not shown misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 10, 2013, reference 02, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css