

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS L WARD
Claimant

APPEAL NO. 08A-UI-03831-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 03/23/08 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Thomas Ward filed a timely appeal from the April 16, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 5, 2008. Mr. Ward participated. Chris Bourne, Fraud Supervisor, represented the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Ward was employed by a Wells Fargo Bank from August 29, 2005 until March 27, 2008, when Fraud Supervisor Chris Bourne and Fraud Manager Lance Minor discharged him. From August 29, 2005 until April 9, 2007, Mr. Ward worked as a full-time Customer Service Representative in the employer's home equity department. From April 9, 2007 until the discharge on March 27, 2008, Mr. Ward worked as a full-time Fraud Specialist in the employer's fraud department. Mr. Ward's immediate supervisor in the fraud department was Fraud Supervisor Chris Bourne.

The employer discharged Mr. Ward for violating the employer's written code of ethics policy. The employer's code of ethics policy prohibited employees from accessing confidential customer account information in the absence of a specific business purpose. The code of ethics policy prohibited sharing confidential customer account information in the absence of a specific business purpose. The code of ethics policy prohibited sharing information with persons outside Wells Fargo Bank unless required by law and in accordance with Wells Fargo Bank policy.

On March 25, 2008, the employer received a credible complaint that Mr. Ward had accessed confidential customer account information pertaining to former coworkers from a prior employment. Mr. Ward had accessed the credit card and/or debit card accounts of multiple persons out of curiosity and without a business purpose. Mr. Ward had worked with confidential information throughout his employment at Wells Fargo Bank and fully understood the confidential nature of customer account information. Mr. Ward had twice signed an acknowledgment of receipt of the code of ethics policy. At the time Mr. Ward accessed the confidential customer account information, Mr. Ward knew that his conduct was in violation of the employer's code of ethics policy, but did not

calculate that his conduct might cost him his job. Mr. Ward told a former coworker outside Wells Fargo Bank that he had accessed the confidential customer records of other former coworkers. The former coworker alerted a Wells Fargo Bank employee of Mr. Ward's breach of confidentiality.

On March 26, 2008, Fraud Supervisor Chris Bourne met with Mr. Ward to discuss the allegation. Mr. Ward initially denied that he had accessed confidential customer information. When Mr. Bourne indicated that the employer's information technology department could retrieve a record of Mr. Ward's access to the employer's computer system, Mr. Ward admitted that he had in fact accessed confidential customer account information concerning "a few" former coworkers. Mr. Ward admitted that his access to these records was not based on a business purpose. Mr. Ward admitted that he had told a person outside Wells Fargo Bank that he had accessed the customer account information. After Mr. Ward had admitted to violating the employer's code of ethics policy, Mr. Bourne suspended Mr. Ward with pay for the remainder of the day. On March 27, 2008, the employer summoned Mr. Ward to a meeting and discharged Mr. Ward from the employment.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record establishes that Mr. Ward willfully and wantonly disregarded the interests of the employer when he accessed confidential customer account information with out a legitimate business purpose and when he shared with a person outside Wells Fargo Bank that he had done so. Mr. Ward understood clearly the trust relationship between Wells Fargo Bank and its customers. Mr. Ward understood clearly the sensitive and confidential nature of customer account information. Mr. Ward understood clearly the employer's code of conduct and the restrictions it placed on his access and dissemination of confidential customer account information.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Ward was discharged for misconduct. Accordingly, Mr. Ward is disqualified for benefits 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. The employer's account shall not be charged for benefits paid to Mr. Ward.

DECISION:

The Agency representative's April 16, 2008, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw