

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

**JOSEPH T MUHAMMAD**  
Claimant

**APPEAL NO. 10A-UI-10535-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 06/20/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's July 16, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge. An in-person hearing was held on September 1, 2010. The claimant participated in the hearing. The employer did not appear at the hearing. Based on the evidence, the arguments of the claimant, 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 December 1, 2008. The claimant was working as a full-time customer service representative. Randy Morrison supervised him.

In October 2009, the claimant received a written warning for using the Internet for personal reasons. The claimant acknowledged he was wrong for doing this and did not do this again.

The claimant and his supervisor talked every month about job performance issues. In April and May 2010, Morrison did not talk to the claimant about any compliance problems. In mid-June 2010, Morrison told the claimant he was high on the hold list. The claimant explained why his hold time could be high. The claimant understood his supervisor told management the claimant was doing a good job. The claimant was also told to make sure he kept following all the rules because a manager told Morrison that if the claimant was not in compliance, his job was not satisfactory. In June after the claimant learned the employer considered him to have had a non-compliance incident, he claimant asked his supervisor to review the call because the claimant did not agree with the initial conclusion. The incident in question occurred when a third party called to make a payment on behalf of a customer. When the claimant reviewed the checking information and asked if the address was correct, the employer asserted he had violated procedures by giving the third party information about the customer.

On June 18, the employer discharged the claimant. Initially, the employer told the claimant he was discharged for using the Internet for personal reasons in June. Later, the human resource representative told the claimant he had been discharged because of his high hold time and a compliance issue.

### **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. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 facts do not establish that the claimant used the Internet for personal reasons after he received a written warning in October 2009. Although the claimant's hold time was high, the first time this had been addressed with the claimant was in mid-June. The claimant explained why he had a high hold time to his supervisor. The claimant understood his supervisor was satisfied with his work performance and told management the claimant was doing a good job.

The other asserted reason the claimant understood he had been discharged was for asking a third party who called in to make a payment on a customer's behalf to verify some check information was correct. The claimant disagreed that this should be counted against him and asked his supervisor to review the call. The claimant was not told the outcome of that review.

The employer may have had business reasons for discharging the claimant. The facts do not, however, establish that claimant intentionally failed to perform his job satisfactorily. He did not intentionally disregard the employer's interests. For unemployment insurance purposes, he did not commit a current act of work-connected misconduct. Therefore, as of June 20, 2010, the claimant is qualified to receive benefits

**DECISION:**

The representative's July 16, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 20, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw