

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L FROHN
Claimant

APPEAL NO: 14A-UI-00741-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 12/08/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 9, 2014 determination (reference 01) that disqualified her from receiving benefits and she held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the February 12 hearing. F.K. Landolphi, a representative with Barnett Associates, appeared on the employer's behalf. Nicole Greteman, testified on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting a current act of work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work in April 2008. She worked full time in the collections department. Greteman started supervising the claimant in April 2013.

Before Greteman supervised the claimant, the claimant received a written warning for her workplace conduct in June 2011. The claimant received this warning for raising her voice and making inappropriate comments to co-workers. On September 6, 2013, Greteman gave the claimant a final written warning for her workplace conduct. The final written warning occurred after Greteman had talked to the claimant about the following incidents:

April 30, 2013 – The claimant refused to work with another team member because of personal issues that occurred outside of work.

May 2, 2013 – Greteman considered the claimant disruptive and argumentative during a team huddle because of issues with another team member.

July 17, 2013 – Greteman considered the claimant disruptive during a team huddle and she also refused to go to Greteman's office when asked to resolve an issue between the claimant and another employee. (Employer Exhibit One.)

On August 19, 2013, Greteman talked to the claimant about failing to voice her concerns in a professional manner during a team huddle. Greteman also talked to the claimant about raising her voice, not giving other team members time to respond to her questions and concerns and told the claimant that her tone of voice of not acceptable. On September 4, 2013, the claimant made a sarcastic remark after Greteman made a comment about the claimant being on a break for an extended time. When Greteman asked the claimant to talk to her so she did not distract other team members, the claimant refused and told Greteman that she would not talk to her right now. Greteman considered the claimant's response insubordinate and then gave her the September 6, 2013 final written warning. The employer considered the September 6, 2013 as the claimant's final written warning and further unprofessional conduct could result in the claimant's termination.

Matt Hill, a co-worker who worked close to the claimant, gave the claimant and others training on how to handle R1 calls, which are infrequent. As a result of the infrequency of R1 calls, it would not be unusual for Hill or C., another employee, to sit with the claimant and other team members for on-going training issues on R1 calls.

On December 5, a R1 call was transferred to the claimant. When the claimant received the transfer, she had problems getting into the R1 account. The claimant easily becomes frustrated or anxious when there are problems. When she could not get into the R1 account, she asked Matt Hill for assistance. He could not immediately help her because he was on a call. When the claimant tried to get her R1 training materials, the door on her cabinet slammed shut. The claimant has had problems with the door doing this same thing before. When Matt Hill was not available to help, the claimant asked C. for assistance. C. refused to help the claimant because she did not like the claimant's tone of voice when she asked for help. After Matt Hill was finished with his call, he took over the claimant's transferred R1 call.

On December 5, 2013, the claimant went to Greteman's office very upset. She told Greteman she did not want to take any more R1 calls and needed more training before she took any more of these calls. The claimant told Greteman that C. had not helped her when the claimant asked for assistance because C. had not liked the claimant's tone of voice. The employer talked to several employees about the incident. R.P. told the employer that the claimant became frustrated with a R1 transfer call and had yelled for Matt Hill several times to help her. Some employees reported that the claimant slammed down a mouse or headset. Matt Hill indicated that he had not witnessed anything bad on December 5, but the claimant had a low tolerance for stressful calls. He did not characterize the claimant as yelling at him or at C. The claimant acknowledged she becomes easily frustrated, but when C. refused to help her, she became very upset because she understood C. was there to help team members.

Since the claimant had previous warnings for inappropriate and unprofessional conduct at work and C. reported the claimant's tone of voice was rude and unprofessional when she asked for C.'s help, the employer concluded the claimant again violated the employer's standard of business conduct and ethics by failing to treat all team members with courtesy, respect and professionalism. The employer discharged the claimant on December 10, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Even though the claimant asserted she did not realize her job was in jeopardy after she received the September 6, 2013 final written warning, this assertion is not credible. The employer established business reasons for discharging the claimant on December 10, 2013. The only witnesses present at the December 5 incident were the claimant and Matt Hill. C. who complained that the claimant's tone for assistance was rude and unprofessional did not testify at the hearing. The claimant's and Hill's testimony must be given more weight than the employer's reliance on information from employees who did not testify at the hearing. While the claimant became frustrated when she could not access the necessary accounts to address the R1 transfer and the customer who had been transferred a number of times was also frustrated, the evidence does not establish that the claimant yelled, slammed anything, or was rude or unprofessional when she requested assistance from C. The evidence does not establish that the claimant committed work-connected misconduct on December 5, 2013. Therefore, she is qualified to receive benefits.

DECISION:

The representative's January 9, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of December 8, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs