

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA L MCCOLLOUGH
Claimant

APPEAL NO. 11A-UI-14236-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 10/09/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Christina L. McCollough filed a timely appeal from an unemployment insurance decision dated October 25, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held November 21, 2011, with Ms. McCollough participating. Pamela Bailey of Barnett Associates appeared on behalf of the employer, Wells Fargo Bank NA. Loan Administration Manager Patrick Prescott testified. Claimant Exhibit A and Employer Exhibit 1 were admitted into evidence.

ISSUES:

Was the separation a disqualifying event?

Is the claimant eligible for unemployment insurance benefits?

FINDINGS OF FACT:

Christina L. McCollough was employed by Wells Fargo Bank NA from January 2003 until she was discharged October 10, 2011. She last worked full-time as a customer service representative. Ms. McCollough had missed a significant amount of work earlier in 2011 because of a health condition. The company notified her in writing that she was not eligible for further FMLA leave. She was sent home on October 4, 2011, because she had not provided medical information to the employer after the employer had notified her that she was ineligible for medical leave. Ms. McCollough is under a doctor's care, but under no medical restrictions related to employment.

REASONING AND CONCLUSIONS OF LAW:

This decision is based on information submitted by the parties during the contested case proceeding. Although the fact-finder had disqualified the claimant upon a finding that the claimant had voluntarily left employment, there is absolutely no evidence in this record in support of the proposition that the claimant desired to end the employment relationship. The employer's witness, in fact, testified that the company had discharged Ms. McCollough. The

question, then, is whether the evidence establishes that the claimant was discharged for misconduct. It does not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the discharge was a current act of misconduct. See 871 IAC 24.32(8).

The evidence does not establish a current act. The claimant was discharged for failing to submit documentation for absences beginning in May 2011. It establishes that the claimant was told by the employer in June that she did not qualify for FMLA. The employer took no action until the claimant had returned to work on October 3, 2011. The claimant's failure to provide documentation to the employer was not an act of misconduct at the time of the separation. No disqualification may be imposed.

The remaining question is whether the claimant meets the eligibility requirement of being medically able to work. She does.

The claimant testified under oath and without contradiction that she was well enough to return to work on October 3, 2011, the week before her separation. She testified that she is not under any medical restrictions adversely affecting her ability to earn a living.

DECISION:

The unemployment insurance decision dated October 25, 2011, reference 01, is reversed. The separation was a discharge, not a quit. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw