

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EILEEN M TAYLOR
Claimant

APPEAL NO. 11A-UI-09354-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 06/12/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 8, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 8, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kelley Londolphi participated in the hearing on behalf of the employer with witnesses Marsha Bailey and Amy Willitt. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time as a phone banker from August 30, 2010, to June 16, 2011. The claimant was informed and understood that under the employer's work rules, misrepresenting information to receive compensation or to meet sales goals was prohibited.

The employer uses a sales tracker program for phone bankers to use to track instances when the banker suggested a sales product to customer, set up an additional service for a customer, or transferred the call for a sales product. The claimant understood that if a product was mentioned, she could track it using the sales tracker program even if the customer declined the product because planting the idea could result in a later sale that she understood she would receive credit for. The claimant had mentioned this to other phone bankers in the presence of supervisors and was never told her understanding was incorrect. Her calls were also regularly audited and she never received any warnings that she was tracking sales improperly.

On June 16, 2011, the employer discharged the claimant after discovering instances on June 8, 9, and 10 when the claimant had tracked a sale of a product where the customer had not indicated an interest in the product mentioned by the claimant or, in a couple of cases, where a product was incorrectly entered in the tracking program. The claimant never deliberately misrepresented information in the tracking system. Calls were required to be handled quickly and there may have been times that the claimant made mistakes in entering information.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about her understanding of when she could track a sale and do not believe the claimant deliberately misrepresented information to receive compensation or to meet sales goals.

The employer has failed to meet its burden of proving the claimant committed work-connected misconduct.

DECISION:

The unemployment insurance decision dated July 8, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw