

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A ZABEL**  
Claimant

**APPEAL NO. 10A-UI-12386-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: -07/25/10**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 25, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 19, 2010. Claimant participated. Eka Oto of Barnett Associates represented the employer and presented testimony through Debra Mincks, Collections Supervisor. Exhibits One through Eleven were received into evidence.

**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: Elizabeth Zabel was employed by Wells Fargo Bank as a full-time debt collector. Ms. Zabel's immediate supervisor at the end of the employment was Debra Mincks, Collections Supervisor. Ms. Mincks became Ms. Zabel's supervisor effective April 1, 2010. Ms. Mincks and Candace Cartwright, Human Resources Manager, discharged Ms. Zabel on July 8, 2010 because she did not meet the employer's performance expectations during the month of June. The employer had sampled three collections calls that Ms Zabel had handled in June and found that she completely follow the employer's rubric for such calls. Ms. Zabel might handle 40-50 calls per day. Ms. Zabel's work performance was generally consistent throughout the employment. Often she satisfied the employer's monthly call monitoring rubric, but eight times during the employment she did not. The employer discharged Ms. Zabel for not performing to the employer's satisfaction.

**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 indicates that Ms. Zabel performed her work duties to the best of her ability, but, based on a small sampling of the calls she handled, did not always perform to the employer's expectations. The weight of the evidence fails to establish a willful or wanton

disregard of the employer's interests. Instead, the evidence indicates that Ms. Zabel did not always perform to the employer's expectations. This was not misconduct in connection with the employment that would disqualify Ms. Zabel for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Zabel was discharged for no disqualifying reason. Accordingly, Ms. Zabel is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Zabel.

**DECISION:**

The Agency representative's August 25, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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