

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DENNIS L COCKAYNE**  
Claimant

**WELLS FARGO BANK NA**  
Employer

**APPEAL 16A-UI-09641-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/31/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 31, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failure to follow instructions in performing his job. The parties were properly notified of the hearing. A telephone hearing was held on September 21, 2016. The claimant, Dennis L. Cockayne, participated. The employer, Wells Fargo Bank, N.A., did not register a telephone number at which to be reached and did not participate in the hearing. The employer sent in notice stating it would not be participating in the hearing.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a recovery specialist, from April 16, 2012, until August 3, 2016, when he was discharged for disconnecting a telephone call.

Sometime in July, claimant received a telephone call from a customer who was not a recovery customer. Claimant was trying to route the customer to the proper location, but he was unsuccessful. Claimant then intentionally disconnected the call, as he was frustrated and had a lot of personal issues causing him stress. Claimant's manager reviewed the call with him approximately one week after the call. Claimant's manager asked for an explanation, and claimant explained that he was frustrated and could not deal with the call. Claimant was informed that upper management would review the call and further action might be taken. Approximately ten days later, claimant was discharged. Claimant denies he had ever intentionally disconnected a call in the past. Claimant had no disciplinary actions in his record related to customer service. He was aware he could lose his job for intentionally disconnecting a telephone call.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. There is no evidence in the record that claimant had a pattern of intentionally disconnecting customers' calls. Claimant credibly testified that he was under a considerable amount of personal stress at the time, and he was forthright in accepting that this was a judgment error. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The August 31, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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