

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A WASHINGTON
Claimant

APPEAL NO. 07A-UI-06301-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 05/13/07 R: 02
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 13, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 11, 2007. Claimant participated. Employer participated through Jeanine Buntenbach and Terri Seidl.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time consumer loan underwriter from April 4, 2005 until May 15, 2007 when he was discharged. He had transferred to this unit less than two months earlier and was told to get files done because they were behind. On May 11, claimant had originally arranged for paid time off (PTO) in advance for a dental appointment and had reported to work an hour early to make up for that time. He wanted to discuss his performance review with site manager, Chris Grayson and requested a meeting. Grayson was only available during the time the dental appointment was scheduled so claimant cancelled the dental appointment to meet with Grayson on May 11 from 3:30 p.m. to 4:30 p.m. He was scheduled to work until 5:00 p.m. but because of the length of the meeting with Grayson asked Buntenbach via e-mail for one-half hour overtime to complete a file, which she granted. When completing the time sheet for the week he inadvertently excluded the PTO, which resulted in the appearance that he worked an additional hour and one-half rather than one-half hour. Claimant was first apprised of this error on Monday, May 14 in the afternoon. He then recalled that he had cancelled the dental appointment for the meeting with Grayson and requested permission to rectify the error. Buntenbach did not respond but fired claimant the next day.

On April 23, claimant stayed late to work on a file because a supervising underwriter asked about the file and the system he needed to complete that file had crashed. The supervising underwriter indicated she would put a note in the system for Buntenbach and directed claimant to get as much done as he could and then go home.

On May 9, claimant worked until 6:00 p.m. instead of 5:00 p.m. and had been told to get permission for overtime in writing earlier that day. However, he had a meeting that took him away from his work that he was told he must finish that day. So he worked to finish the files as directed and lost track of time.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The final incident was merely an isolated incident of forgetting about the PTO that would have been cancelled because of the meeting with Grayson. There is no indication of deliberation in completing the time sheet as he did or of any other similar errors, much less intentional behavior on this or any other occasion. The other incidents have rational and reasonable explanations and do not contribute to a pattern of negligence. Employer's sudden focus on the minutiae lends credence to claimant's belief of retaliation for challenging a management decision in the previous unit. Benefits are allowed.

DECISION:

The June 13, 2007, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css