

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIANNA OLSON

Claimant

APPEAL NO. 06A-UI-09454-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 08/20/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank NA (employer) appealed an unemployment insurance decision dated September 15, 2006, reference 01, which held that Brianna Olson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2006. The claimant participated in the hearing. The employer participated through Julie Woods, Human Resources Consultant. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time employee on July 31, 2001 and became a store manager on April 3, 2006. She was discharged on August 14, 2006 for failure to perform managerial responsibilities with regard to workplace conduct. The employer received two anonymous complaints about the claimant. The complaints allege that she contributed to a harassing work environment. The first complaint was that the claimant used profanity, "especially the 'F' word," and the second complaint was that she failed to act in a matter in which a team member was upset. The employer met with the claimant on August 8, 2006 and the claimant admitted using profanity. The other issue involved a magazine cutout that said, "I'm gay." A team member put the cutout on the claimant's door and she said it was not appropriate. The team member removed it from the claimant's door and put it on another team member's nameplate. That second team member was upset about it and spoke to his manager, who spoke to the claimant about the issue. The team member's manager told the claimant the team member did not want to discuss it, so the claimant took it no further. The employer considered that she failed to act; but the claimant stated that if she would have taken it further, it could have been considered harassment since the team member specifically stated

he did not want to talk about it. The claimant was not discharged for another week, because one team member the employer needed to talk to was on vacation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for failure to perform managerial responsibilities with regard to workplace conduct. The employer may have established unsatisfactory conduct, but has not provided sufficient evidence of disqualifying misconduct. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated September 15, 2006, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw