

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

IVANNA DE COSS MORALES
Claimant

APPEAL 21A-UI-20209-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 03/07/21
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Overpayment of FPUC benefits

STATEMENT OF THE CASE:

On September 13, 2021, Wells Fargo Bank North America, (employer/appellant) filed an appeal from the September 2, 2021, reference 02, unemployment insurance decision that granted benefits based upon the conclusion the claimant was discharged due to non-disqualifying conduct. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2021, at 2:00 p.m. The claimant did not participate. The employer participated through Manager Contact Center Michael Franco. The employer was represented by Equifax Hearing Representative Thomas Durso. Official notice was taken of the agency records. No exhibits were received into the record.

ISSUES:

Whether the claimant's separation from employment was disqualifying?
Whether the claimant has been overpaid regular unemployment benefits?
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation benefit?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as an inbound sales specialist from July 13, 2016, until this employment ended on March 22, 2021, when she was discharged. The claimant reported directly to Contact Center Manager Michael Franco.

Starting in December 2020, Mr. Franco emphasized the importance of providing an updated 1-9 form to the claimant. The claimant indicated she understood, but due to the Covid19 pandemic, the process was delayed. On February 17, 2021, the employer placed the claimant on an involuntary leave of absence until she provided the form.

On March 22, 2021, the claimant was terminated because she failed to provide an updated U.S. Citizenship and Immigration Services Employment Eligibility Verification 1-9 Form. There were no other reasons for her termination.

The claimant was rehired on April 20, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. He further concludes the remaining issues are moot because the claimant is entitled to benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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

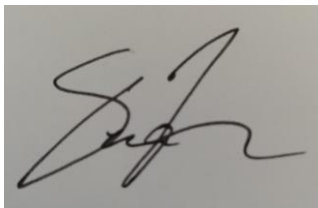
unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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.

Mr. Franco testified that the claimant was attempting to get the form in before the deadline, but she was unable to due to delays arising from the Covid19 pandemic. Given these facts, the employer has failed to meet its burden that the claimant's discharge was due to willful work-related misconduct. Benefits are granted, provided she is otherwise eligible. The overpayment issue is moot because the claimant is entitled to benefits.

DECISION:

The September 2, 2021, reference 02, unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The overpayment issue is moot because the claimant is entitled to benefits.



Sean M. Nelson
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December 1, 2021
Decision Dated and Mailed

smn/mh