

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAZAK M AL-HASSAN**  
Claimant

**APPEAL NO. 09A-UI-08899-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**Original Claim: 05/10/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated June 12, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 9, 2009. The claimant participated personally. The employer participated by Kris Logue. Exhibit One was admitted into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The employer discharged the claimant on May 12, 2009, for falsifying call logs. The claimant was a collector for the employer. The employer's Witness software program showed the claimant recorded that the customer/debtor answered the phone and the claimant recorded on his screen the customer did not answer on three calls on May 12. The claimant stated he was not aware that that he had improperly recorded these calls and believes that the customers may have been answering the phone as he was hanging up. The employer has a policy, which was provided to the claimant, that requires accurate company records. The claimant received a warning on May 8, 2009 for personal use of phone, email, and the computer while at work.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. 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 claimant improperly recorded that customers did not answer the phone. The claimant's explanation that the customers answered the phone while he was hanging up is as convincing as the employer's assertion that the claimant deliberately ignored answered calls and put in inaccurate information. The employer has the burden of proof in showing misconduct. The employer has failed to prove misconduct. The evidence shows ordinary negligence and does not rise to the level of job-related misconduct.

**DECISION:**

The representative's decision dated June 12, 2009, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/kjw