

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

RANDALL D KIMSEY  
443 E SYCAMORE  
OGDEN IA 50212

WELLS FARGO BANK  
C/o SHEAKLEY UNISERVICE INC  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-10298-CT  
OC: 08/22/04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated September 13, 2004, reference 01, which held that no disqualification would be imposed regarding Randall Kimsey's separation from employment. After due notice was issued, a hearing was held by telephone October 14, 2004. Mr. Kimsey participated personally and Exhibits A and B were admitted on his behalf. The employer participated by Cassandra Sherzan, Supervisor, and Hannah Anderson, Team Leader.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Kimsey was employed by Wells Fargo Bank from October 2003 until August 25, 2004 as a full-time customer service representative. He was discharged after receiving a series of warnings.

On April 20, 2004, Mr. Kimsey received a verbal warning because he would not go into the restroom during a tornado drill. He is claustrophobic and did not want to be in a confined area with others. He received a warning on May 13 because he used profanity in the presence of other employees. He referred to a supervisor as "fucking Kaylee." On July 9, Mr. Kimsey received a verbal warning because of an inappropriate conversation. He had made reference to himself as a "sexpert" and stated that he danced naked at home while juggling balloons. Mr. Kimsey was notified on July 21 that he would be discharged if there were any further problems at work.

The decision to discharge was based on a conversation Mr. Kimsey had with a coworker, Hannah Anderson, on August 18. The two were outside on break with approximately five other employees. Mr. Kimsey stated to Ms. Anderson that the supervisor, Cassandra Sherzan, was "pissing" him off because of her handling of his payroll hours. He indicated his feelings that he did not believe Ms. Sherzan was able to do her job correctly. Her referred to previous supervisors as buffoons. Ms. Anderson believed he was merely venting his frustration, the same as he had done with her on other occasions. She reported the conversation to Ms. Sherzan and, as a result, Mr. Kimsey was notified of his discharge on August 25, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kimsey was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that there was a current act of misconduct in relation to the discharge date. The final conduct which precipitated Mr. Kimsey's discharge was the fact that he made disparaging remarks about his supervisors on August 18. The conversation occurred outside during a break as he was venting his frustrations to a coworker. It is unreasonable to expect employees to be docile and well-mannered at all times. It is not unreasonable for an employee to vent his frustrations to coworkers. Mr. Kimsey did not confront the supervisor or create any disturbance in the workplace because of his frustrations. He discussed those frustrations with someone he felt he could talk to as he had in the past and did so outside while on break. His conduct was not clearly inappropriate. For the above reasons, the administrative law judge concludes that the conduct which triggered Mr. Kimsey's discharge did not constitute misconduct.

Mr. Kimsey's last warning prior to discharge was on July 21, 2004. The only adverse conduct after that point was on August 18, almost one month later. The warning of July 21 would not represented a current act in relation to the August 25 discharge date. Inasmuch as the final act was not an act of misconduct and there was no current act of misconduct, no disqualification may be imposed. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated September 13, 2004, reference 01, is hereby affirmed. Mr. Kimsey was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b