

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY W HARRIS
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 20A-UI-01353-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/12/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rodney Harris (claimant) appealed a representative's February 5, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2020. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Echo Caskey, Executive Office Manager, and Matthew Ward, Vice President.

The employer offered and Exhibits One and Two were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 29, 2008, and at the end of his employment he was working as a full-time executive office case specialist two where he handled about five calls per day. He received the employer's handbook during his initial training. He received de-escalation training when he worked in another department where he handled about seventy calls a day. The employer never gave him a warning for his conduct on the telephone.

The claimant complained to the vice president about the executive office manager's (EOM) inappropriate conduct. She did not know answers to questions, did not take escalated calls from customers, and seemed to target him for negative comments.

The claimant had a medical issue and took short-term disability for twelve weeks. He returned in mid-June 2019, and the EOM started to criticize the claimant's conduct on July 11, 2019, in performance management evaluation forms. The July 2019, evaluation was completed on

September 20, 2019, and used the phrase “unnecessary customer escalations were observed”. No specifics were offered.

Also on September 20, 2019, the EOM wrote an Informal Warning. The claimant did not acknowledge receipt of the document. The warning was issued for speaking to customers in an unprofessional manner. It listed days, times, and examples of phrases the claimant used. The claimant used phrases he learned in de-escalation training and asserted that the words did not reflect the tone in which they were stated.

The August 2019, evaluation was completed on September 25, 2019, and used the phrase “unnecessary customer escalations were observed”. The September 2019, evaluation was completed on October 14, 2019, and used the phrase “unnecessary customer escalations were again observed”. Again, the EOM did not offer any specifics about how the claimant was unprofessional.

On December 5, 2019, the EOM wrote a Formal Warning. The claimant did not acknowledge receipt of the document. The warning was issued for speaking to a customer in an unprofessional and negative manner on November 6, 2019. The employer notified the claimant that further infractions could result in termination from employment.

On January 6, 2020, the EOM heard the claimant raise his voice with a caller. Later she retrieved the call and listened. The EOM considered the claimant to be unprofessional during the call because his voice was raised and he did not provide her name when the customer asked for a supervisor. The claimant did not provide the EOM because she previously refused to speak with customers. The claimant denied raising his voice. On January 15, 2020, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer discharged the claimant for poor work performance and has the burden of proof evidence of the poor performance and to show evidence of intent. The employer provided the testimony of the EOM and vice president who heard the call on January 6, 2020. The EOM stated the claimant's voice was raised and he did not refer the call to her. The vice president agreed. The claimant denied that his voice was raised. A recording of the call was not provided to determine this question of fact. If the claimant's voice was raised, why was it raised.

The second issue is why the claimant did not transfer the call to the supervisor. The vice president knew complaints had been lodged against the supervisor for not taking calls. The employer provided no documentation about the number of escalated calls the supervisor took per week. The employer has not provided essential evidence that it possesses to prove misconduct. Without the documentation to support its assertion, misconduct cannot be established.

Thirdly, the EOM felt the claimant had issues with escalations or unprofessionalism but did nothing to provide essential training to him. She knew this for more than six months. The employer did not provide any evidence of intent at the hearing. The claimant's poor work

performance was a result of his lack of additional training. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 5, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn