

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

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WELLS FARGO BANK
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Appeal Number: 05A-UI-02871-DWT
OC: 02/13/05 R: 01
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Gary P. Bailey (claimant) appealed a representative's March 14, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Wells Fargo Bank (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2005. The claimant participated in the hearing. Dale Luthy, a senior vice president, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 4, 2003. The claimant worked as a full-time private banker. The employer's Code of Ethics states employees are not allowed to make personal loans to the employer's customers unless the customer is a family member.

The claimant made a personal loan to a long-time friend, W.H., in late July or early August 2004. When the claimant made the loan, W.H. was not a customer. On August 5, 2004, W.H. became a customer. During the claimant's employment, his sister sent him \$10,000.00 to invest on her behalf with a local land developer.

On August 13, 2004, the employer's compliance and human resource departments started investigating the claimant's account because either one or both of the above transactions raised "red flags" for the employer. Luthy was not informed about the employer's investigation until December 9, 2004. The employer held a meeting with the claimant on December 16, 2004.

In the December 16 meeting, the claimant did not express a clear understanding of the employer's Code of Ethics. The claimant did not understand he violated the employer's Code of Ethics when he made a personal loan to a friend who was not a customer at the time of the loan. Since W.H. became a customer within a few days of the personal loan, the employer concluded the claimant violated the employer's Code of Ethics. The employer discharged the claimant on December 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The facts reveal the employer knew about the claimant's personal loan to W.H. in mid-August 2004 but did not talk to the claimant about this incident until mid-December 2004. Even if the claimant violated the employer's Code of Ethics, the employer failed to discharge the claimant for a current act. Therefore, the employer failed to establish that the claimant was discharged for a current act of work-connected misconduct.

If the employer had discharged the claimant in August for this incident, the facts do not establish that the claimant intentionally violated the employer's Code of Ethics. The claimant may have used poor judgment when he made the loan to a personal friend right before the friend became a customer, but this act by itself does not amount to work-connected misconduct. As of February 13, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 14, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons. The employer's reasons for discharging the claimant do not constitute a current act of work-connected misconduct. As of February 13, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc