IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

BARBARA A SHUNK
Claimant

WELLS FARGO BANK NA
Employer

APPEAL NO. 18A-UI-00884-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/10/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Barbara Shunk (claimant) appealed a representative's January 18, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 12, 2018. The claimant participated personally. The employer was represented by Michele Hawkins, Hearings Representative, and participated by Ines Custovic, Loan Administration Manager Two. The employer offered and Exhibit 1 was received into evidence.

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 in July 2011, and at the end of her employment she was working as a full-time home preservation specialist one. The claimant signed for receipt of the employer's handbook when she was hired. Authentication errors were made by employees but the employer endeavored to keep them to a minimum.

If a worker had five or more business conduct review fails in the past six months, her supervisor would complete an assessment form and discuss the fails with her. The supervisor might also issue her a written warning. A fail may occur if the worker did not verify a caller's name or the last four digits of a social security number.

On July 28, 2017, the employer issued the claimant an informal warning for having three authentication errors in a little over three months. On August 17, 2017, the employer issued the claimant a formal warning for having four authentication errors and a documentation error in a little over five months. The employer notified the claimant both times that further infractions could result in termination from employment.

On November 21, 2017, the claimant called an authorized third party, the customer's spouse. The employer noted that the claimant did not authenticate the customer's name when calling the authorized third party. The claimant was unaware this was a rule. The employer learned of the claimant's actions shortly after November 21, 2017. On November 29, 2017, the claimant did not verify the last four digits of the social security number of the customer. The employer learned of the claimant's November 29, 2017, actions shortly after November 29, 2017.

The employer worked with the Human Resources Department to see if they could continue to employ the claimant. The employer thought the claimant was a good worker. In the end, the employer terminated the claimant on December 11, 2017, for making five or more errors in the past six months.

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(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 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 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 terminated the claimant on December 11, 2017, for making five or more errors in the past six months. Errors in the final six months of employment occurred on July 19, August 7, and November 29, 2017. There was no indication in the rules provided by the employer that failure to give a customer's name is a violation of the employer's policy.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on November 29, 2017. The claimant was not discharged until December 11, 2017. The final incident and the termination are too remote. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 18, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs