

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLIFTON W MELTON**  
Claimant

**APPEAL NO. 11A-UI-04841-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 02/20/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Clifton Melton filed a timely appeal from the March 29, 2011, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on May 10, 2011. Mr. Melton participated. The employer submitted written notice that it would not be participating in the hearing and did not appear for the hearing.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Clifton Melton was employed by Wells Fargo Bank North America as a full-time collector from August 2009 until February 22, 2011, when Supervisor Christine Pace notified him by telephone that he was discharged from the employment. Ms. Pace was Mr. Melton's immediate supervisor. Mr. Melton had last performed work for the employer on January 31, 2011. Between January 31 and February 22, 2011, Mr. Melton was on an approved leave of absence under the Family and Medical Leave Act. When Ms. Pace notified Mr. Melton of the discharge, she alleged that Mr. Melton had directed a vulgar epithet to a customer during a telephone call. Mr. Melton had no recollection of any such call. Though all calls were recorded, the employer did not review the call with Mr. Melton. The alleged misconduct in connection with the phone call was the sole basis the employer cited for ending Mr. Melton's employment.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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 employer failed to participate in the hearing and thereby failed to present any evidence whatsoever to support the allegation that Mr. Melton was discharged from the employment. The evidence in the record fails to establish that Mr. Melton uttered a vulgar epithet during a phone call with a customer or engaged in any other conduct contrary to the interests of the employer. Based on the evidence in the record and application of the appropriate law, the administrative

law judge concludes that Mr. Melton was discharged for no disqualifying reason. Accordingly, Mr. Melton is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Melton.

**DECISION:**

The Agency representative's March 29, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs