

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NADIA BOWMER
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 21A-UI-11886-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 02/28/21
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the April 6, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 16, 2021, at 3:00 p.m. Claimant participated. Employer participated through Jackie Boudreaux, Hearing Representative. Jenifer Rude-Wilder, Business Liaison Manager, was a witness for employer. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Customer Service Representative from February 20, 2012 until her employment with Wells Fargo ended on March 2, 2021.

On January 22, 2021, claimant attended an annual performance review with her supervisor and another manager via telephone conference call. During the call, claimant screamed when she learned that she would not be receiving a pay increase. Employer told claimant that her conduct was unprofessional; claimant apologized. Employer did not tell claimant that her conduct would be investigated further and may lead to disciplinary action.

On March 2, 2021, employer discharged claimant for unprofessional conduct; the final incident leading to employer's decision to terminate claimant's employment was claimant's outburst

during the January 22nd conference call. The delay between the final incident and claimant's discharge is attributable to employer's internal business processes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

Conduct asserted to be disqualifying misconduct must be current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). Whether the act is current is measured by the time elapsing between the employer's awareness of the misconduct and the employer's notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

Employer was aware of claimant's conduct during the performance review on January 22, 2021. Employer did not inform claimant that an investigation would be conducted or that her conduct may lead to further discipline including termination of employment. More than five weeks after

the performance review, employer terminated claimant's employment. Claimant's discharge was her first notice that her conduct on January 22, 2021 was grounds for dismissal. More than five weeks elapsed between January 22, 2021 and March 2, 2021. Claimant's actions on January 22, 2021 were no longer a current act at the time of her discharge. Without a current or final act of misconduct, the history of other incidents need not be examined. Employer has not met its burden of proving claimant was discharged for a current act of disqualifying work-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

Because claimant's separation is not disqualifying, the issues of overpayment, repayment and charges are moot.

Because claimant is eligible for regular unemployment insurance benefits, claimant is also eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

DECISION:

The April 6, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and charges are moot. Claimant is eligible for Federal Pandemic Unemployment Compensation.



Adrienne C. Williamson
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July 27, 2021
Decision Dated and Mailed

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