

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VALERIE A DEVRIES**

Claimant

**APPEAL NO. 10A-UI-13802-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 09/05/10**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 1, 2010, reference 01, that held the claimant was not discharged for misconduct on September 7, 2010, and that allowed benefits. A telephone hearing was held on November 3, 2010. The claimant participated. Jim Sorge, Recovery Supervisor; Russell Schutte, Manager; and Steve Zaks, Representative, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on November 12, 2009, and last worked for the employer as a full-time collections specialist on September 7, 2010. The employer discharged claimant for “gaming” on credit card holder accounts in order to receive a larger incentive and/or bonus. The claimant believes she was terminated due to job elimination.

The employer discovered evidence the claimant was splitting a one-time credit card holder payment to make it appear she was collecting multiple payments. Supervisor Sorge investigated the incident by contacting two credit card holders about this conduct. The claimant denies any act of gaming. The claimant believes she terminated because she had indicated to human resources she was considering relocation due to marriage and moving to another state on or about September 1.

## REASONING AND CONCLUSIONS OF LAW:

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 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 administrative law judge concludes the employer has failed to establish the claimant was discharged for misconduct in connection with employment on September 7, 2010.

The claimant denies any act of gaming. The employer offered no written evidence and proof that claimant was gaming by splitting one-time credit card holder payments. The claimant offered no written statement admitting she was gaming. The discharge issue is "clouded" by the employer's knowledge she had expressed intent to leave employment. The employer did not offer evidence of any written document signed by claimant that she was terminated for gaming or any evidence of an exit interview.

**DECISION:**

The department decision dated October 1, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on September 7, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw