

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA S GAYDEN**  
Claimant

**APPEAL NO. 13A-UI-03200-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK**  
Employer

**OC: 02/17/13**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's decision dated March 13, 2013, reference 01. A hearing was scheduled for April 15, 2013. Prior to the hearing date the employer indicated it would not participate in the hearing and no hearing was deemed necessary.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The claimant was employed by Wells Fargo until February 15, 2013, and was discharged at that time. The employer had declined to participate in the hearing to offer testimony in support of the discharge.

**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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). As the employer would not participate in the hearing it would not be able to provide any testimony or evidence in support of the decision to discharge or rebut any testimony presented by the claimant. It could not meet its burden of proof. Disqualification may not be imposed.

**DECISION:**

The representative's decision of March 13, 2013, reference 01, is reversed. Theresa Gayden is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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