

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMAAL D PEEPLES
4107 – 22ND AVE SW 5
CEDAR RAPIDS IA 52232**

**WELLS FARGO BANK NA
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

APPEAL NO. 09A-UI-16979-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMAAL D PEEPLES
Claimant

APPEAL NO. 09A-UI-16979-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**Original Claim: 10/11/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 2, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 16, 2009. Claimant Jamaal Peeples participated. Lisa Fitzpatrick, Store Manager, represented the employer.

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: Jamaal Peeples was employed by Wells Fargo Bank as a full-time personal banker from December 2008 until October 15, 2009, when Lisa Fitzpatrick, Store Manager, and Rick Weber, General Manager, discharged him from the employment. Ms. Fitzpatrick was Mr. Peeples' immediate supervisor. Mr. Peeples' duties as a personal banker included serving customers, opening accounts, and submitting consumer loans. Mr. Peeples received two weeks of training at the start of the employment and an additional four weeks of banker training later on.

The final incident that prompted the discharge occurred on October 14, 2009. On October 13, a customer telephoned and spoke with Mr. Peeples to ask whether the customer's old account was still open. The customer had recently started new employment and had given the new employer the old account number for direct deposit purposes. The customer was about to receive her first paycheck and wanted to be able to access the funds. On October 13, Mr. Peeples reviewed the account history and answered the customer's question. Mr. Peeples told the customer the old account was closed and that the customer would need to come in and open a new account.

On October 14, 2009, the customer came in and Mr. Peeples assisted the customer with opening the new account. The employer's procedures required that Mr. Peeples review two forms of customer identification, one of them a picture ID, in connection with opening the

account. When Mr. Peebles got to that step in the process, the customer presented an expired Idaho driver's license containing photo ID and the requisite second form of identification. Mr. Peebles noted in the employer's computer system that the customer had used the same Idaho driver's license to open the earlier account. The employer's software would not allow Mr. Peebles to open a new account with the expiration date that appeared on the expired license. The customer explained that she had renewed her license in Idaho, that Idaho mails the license to the driver, and that the new license had been mailed to her at her sister's home in Idaho. The customer told Mr. Peebles that she had not yet had an opportunity to receive the new Idaho license into her possession. The customer provided Mr. Peebles with the issuance date and expiration date of the new license. Mr. Peebles had already confirmed that the customer in front of him was the same person on the Idaho driver's license and the same customer who had opened the prior account. Mr. Peebles concluded he could trust the customer and the information she provided. Mr. Peebles entered into the employer's computer system the driver's license issuance and expiration dates the customer provided. Mr. Peebles fished helping the customer open the new account. After he was finished helping the customer, Mr. Peebles alerted appropriate staff regarding the need to deposit the direct deposit amount into the new account, rather than the old account. If Mr. Peebles had not taken that final step, the customer's pay would have been returned to the employer.

The customer later went to a different branch and attempted to withdraw funds from the new account. When the customer presented the same photo ID, the teller rejected the ID because it indicated on its face it was expired. The customer then asked why the ID had been sufficient for Mr. Peebles, but not for the teller. This led to Ms. Fitzpatrick being alerted about Mr. Peebles' actions in connection with opening the account. Mr. Peebles' entry of a driver's license issuance and expiration date other than those that were indicated on the ID the customer presented violated the employer's established practices. The employer deemed the act a violation of the employer's code of ethics and deemed it falsification of a record. The employer had a zero-tolerance policy concerning such matters. Mr. Peebles was aware of the code of ethics and was aware that he was not to enter information different than what was contained on the photo ID. Mr. Peebles had been motivated by a desire to assist the customer. Mr. Peebles had not engaged in similar behavior on any occasion.

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 in this matter. See Iowa Code section 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 weight of the evidence does establish that Mr. Peeples knowingly deviated from the employer's policy concerning the integrity of information being entered into the employer's records. The weight of the evidence indicates that the situation was isolated in nature. The evidence indicates mitigating circumstances. These included the records relating to the earlier account, the urgency expressed by the customer, and Mr. Peeples' desire to assist the customer. Though accurate record keeping is very important in a banking context, the driver's license issuance and expiration dates were not critically important pieces of information and Mr. Peeples did not fully appreciate the implication of substituting the dates provided by the customer. Rather than intentional misconduct, the evidence indicates an isolated error in judgment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Peeples was discharged for no disqualifying reason. Accordingly, Mr. Peeples is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Peeples.

DECISION:

The Agency representative's November 2, 2009, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw