

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRIE K HARPER
Claimant

APPEAL NO: 11A-UI-04709-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/13/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 1, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. The claimant participated in the hearing. Mary Otu represented the employer. Jessica Ferber, the collection manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Ten were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2004. She worked as a full-time collection supervisor II. When Ferber became the claimant's supervisor in April 2011, the claimant started having problems at work and Ferber started giving her warnings.

The claimant was on a medical leave of absence December 7, 2010, to January 31, 2011. When the claimant returned to work, she gave the employer a doctor's statement indicating she could not work more than 40 hours a week. The claimant was a salaried employee and her job typically required her to work more than 40 hours a week.

After the claimant returned to work, the employer gave her a final written warning for unprofessional conduct. After receiving the written warning, the claimant understood her job was in jeopardy. While the claimant was on her leave of absence, an employee or employees reported that she failed to give the employee(s) coachings so the employee(s) could learn and improve.

As a result of employee complaints, the employer placed the claimant on a performance improvement plan on February 14, 2011. Ferber told the claimant she had to show significant improvement in the next 60 days or she would be discharged. Even though the performance

improvement plan was effective for 60 days, the claimant had to complete some parts of the plan in two weeks and had to turn in a report by March 5, 2011. When the claimant expressed concern about getting the required work done in two weeks because of scheduled doctors' appointments, the claimant understood Ferber would not make any accommodations for her and expected the claimant to complete the assigned job tasks.

In addition to one-on-ones and side by side evaluations, the employer also expected the claimant to listen to a call with the employee present for any call a quality control employee rated below 81 percent. The employer gave the claimant 20 potential calls to listen to with an employee present. When the claimant turned in her report on March 1, she told Ferber she had completed all but one evaluation for G.G. When the employer reviewed the report that indicated the date and time the claimant had pulled up and listened to a call, the employer concluded the claimant had not listened to 10 of the 20 calls she had been assigned to do. One or more employees reported that during the February evaluation, the claimant only met with the employee and discussed the quality control employee's evaluation, but the claimant had not pulled up the call and listened to it while coaching the employee. When the employer talked to the claimant on March 9, the claimant asserted she listened to all the calls with the employees present when she coached. The claimant believed the report the employer relied upon was not accurate.

The employer concluded the claimant falsified the evaluations she completed because she signed a form indicating she had listened to a call while coaching an employee, but had not. The employer discharged the claimant on March 9 for falsifying employee evaluation forms. After the claimant had been discharged an employee, K. C. reminded the claimant she had problems getting into the system when the claimant had done K.C.'s evaluations and neither the claimant nor K.C. listened to the call. When the claimant did the side by sides, she tried to do a number at the same time because of the short time the employer gave her to complete the evaluations.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for falsifying a document that indicated she listened to a phone call with an employee while coaching the employee. The employer relied on a computer generated report to illustrate reports the claimant falsified. The report (Employer Exhibit One) supported the claimant's testimony instead of the employer's on two evaluations, C.K., a disputed call (Employer Exhibit Nine) and G.G. (Employer Exhibit Seven). The employer did not dispute the claimant's assertion that non-compliance calls that resulted in a 0 percent could be pulled up and listened to in Ferber's office. The claimant did not have to pull up a call under her log in number or name. Since the claimant did a number of calls for employees at one time, it is possible she listened with an employee to a non-compliance call and then other calls at the same coaching time. The claimant acknowledged at the hearing, she had not listened to K.C.'s calls that were below 81 percent with K.C. present. The claimant explained she had problems pulling up calls when she coached K.C.

Even though Employer Exhibit One shows calls the claimant pulled up on various dates and times, this exhibit does not indicate what calls had been pulled up and listened to under Ferber's login or another employee's login. To rebut the claimant's testimony, the employer could have requested employees who complained the claimant did not properly coach them testify or have some employees identified in Employer Exhibits Three through Ten testify. These employees did not testify at the hearing. The evidence establishes the claimant may not have listened to calls for employees identified in Exhibits Three through Ten, but she may have. Based on the claimant's admission, she did not listen to K.C.'s phone calls.

Since the claimant had not received any performance-related warnings before February 7, and she knew and understood her job was in jeopardy after she returned from a leave of absence, the evidence does not establish that she intentionally failed to perform the coachings satisfactorily or that she willfully falsified the evaluation documents. The claimant was under stress and still performed the jobs Ferber assigned her to do in a short time frame to the best of her ability. While the employer received reports from one or more employees, that the claimant did not listen to a call with the employee present, none of these employees were identified and did not participate at the hearing. As a result, the claimant's testimony as to how she conducted the coachings must be given more weight than an unidentified employee.

Based on the facts the employer had in March 2011, the employer established business reasons for discharging the claimant. But based on the facts presented during the unemployment insurance hearing, the claimant did not commit work-connected misconduct. Therefore, as of March 13, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's April 1, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 13, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs