

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA M DINGMAN
Claimant

APPEAL NO. 07A-UI-00748-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

**OC: 12/17/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed a representative's January 11, 2007 decision (reference 01) that concluded Christina Dingman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2007. The claimant participated personally. The employer participated by Todd McGowan, Assistant Vice President, and Lejla Bejtovic, Service Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 3, 2002, as a part-time personal banker. The claimant received a copy of the company handbook. In addition, the claimant attended four years of Sales Integrity Training. The employer did not issue the claimant any warnings during her employment. The employer gave employees sales incentives for enrolling customers in various account packages.

While the claimant worked at the employer's Beavertdale branch her supervisor told her she could issue a pin number to a customer. In December 2006, a teller asked the claimant to open a checking account and savings account for her non-English speaking father. The claimant opened the accounts, issued a pin number and set up the user name and password for the father's online banking and bill pay. The claimant sent the information by mail to the father. The claimant did not understand that the teller did not want her to initiate the internet account. She thought she was helping the customer.

The teller complained to the employer and the employer terminated the claimant on December 20, 2006, for gaming. The employer thought the claimant misrepresented her sales in order to earn sales incentives. The claimant understood after the fact that mailing the items was not secure.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant's single act of carelessness does not rise to the level of misconduct, because there was no wrongful intent or deliberate disregard of the employer's interests. The claimant intended to help the customer. Only later did she realize that the information was not secure. Benefits are allowed.

DECISION:

The representative's January 11, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw