

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN SCHINCKE

Claimant

APPEAL 17A-UI-07061-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 06/11/17

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 10, 2017 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 28, 2017. The claimant, Megan Schincke, participated. The employer, Wells Fargo Bank, N.A., participated through Danielle Olsen, Centralized Sales Manager; and Nathan Gallick, Centralized Sales Supervisor; and Dave Peterson of Barnett Associates represented the employer. Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a Home Mortgage Consultant, from January 30, 2012, until June 14, 2017, when she was discharged. On May 9, 2017, claimant altered a document that had been submitted and signed by a customer. Specifically, claimant typed the customer's social security number into the document, as the customer had left this field blank. The loan administration manager reported this to Olsen on May 9, and Olsen immediately came to claimant to discuss the issue. Claimant was unable to produce the original document for Olsen at that time. Claimant was also informed that day that she was not to speak with this customer or work on his file until further notice. By May 12, the employer had spoken to the customer and verified that the originally-submitted document did not have the social security number included and had received an amended form from the customer that did include the social security number.

Employee Relations became involved with this incident on May 18, 2017, and commenced an investigation on or after that date. Claimant was allowed to continue working during the employer's investigation. On May 30, 2017, claimant was allowed to resume communication with the customer from the May 9 incident, and she returned to working on that file. During the

first week of June, claimant was interviewed by the investigator looking into the May 9 incident. She was discharged on June 14 for altering the customer's document by typing in the social security number.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from unemployment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Here, the incident leading to claimant's discharge occurred on May 9, 2017. Though the employer learned of the incident immediately, it waited five weeks before discharging claimant. Additionally, claimant was allowed to work throughout the investigation and was returned to working on the file at issue before the employer even interviewed her during its investigation. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The July 10, 2017 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn