

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENDY M ZIMMERLINE**  
Claimant

**APPEAL NO. 07A-UI-04222-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 04/01/07 R: 01**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Wendy Zimmerline filed an appeal from a representative's decision dated April 17, 2007, reference 01, which denied benefits based on her separation from Wells Fargo Bank. After due notice was issued, a hearing was held by telephone on May 10, 2007. Ms. Zimmerline participated personally. The employer participated by Donna Loux, Supervisor. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Zimmerline was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Zimmerline was employed by Wells Fargo Bank from March 27, 2006 until March 30, 2007 as a full-time collector. She was discharged for what the employer felt was a violation of its information security policy. The employer discovered on March 29, 2007 that Ms. Zimmerline had used a USB device on her computer at work. It was felt the device could cause major damage. When questioned, Ms. Zimmerline indicated she did not know that policy prohibited using a USB on the work computer. She used the device to bring personal notes and data to work.

Ms. Zimmerline was also discharged for doing personal work on the computer during work time. Employees are allowed to use the computer for personal work only during breaks. Ms. Zimmerline was observed doing personal work between taking telephone calls. She did not have any prior violations of the employer's computer-related policies. The above matters were the sole reason for her discharge.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Part of the reason for Ms. Zimmerline's discharge was the fact that she installed a USB device on her work computer. The administrative law judge has reviewed the employer's information security policy (Exhibit One). The policy does not state that devices such as a USB cannot be installed. The policy prohibits using software not approved by Wells Fargo. However, no mention is made of hardware. There was no solid evidence establishing that the use of USB devices was discussed during the information security training Ms. Zimmerline received.

Ms. Zimmerline was also discharged for using the computer for personal work during work time. Such work was to be done during break times. She was not neglecting her job duties in order to perform personal work. She performed the personal work between receiving calls. Ms. Zimmerline's conduct constituted a good-faith error in judgment. She had not been warned about performing personal work between calls. Therefore, the conduct was an isolated event.

After considering all of the evidence, the administrative law judge concludes that misconduct has not been established. The evidence failed to establish that Ms. Zimmerline had notice that she could not install a USB device on her computer. Her conduct in doing personal work on company time constituted an isolated lapse in judgment. The employer failed to establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's standards or interests. While the employer may have had good cause to discharge Ms. Zimmerline, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

#### **DECISION:**

The representative's decision dated April 17, 2007, reference 01, is hereby reversed. Ms. Zimmerline was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css