

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAIANA R HANSON**  
Claimant

**APPEAL NO. 11A-UI-01373-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 01/02/11**  
**Claimant: Respondent (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 28, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was started on March 4, 2011 and concluded on March 29, 2011. Claimant participated personally and was represented by attorney Jeff Carter on March 4, 2011 and by attorney Bruce Stoltze on March 29, 2011. Raiana Hanson was the only witness who testified for the claimant. Shaun Lampel of Barnett Associates represented the employer on March 4, 2011 and Larry Lampel of Barnett Associates represented the employer on March 29, 2011. Ryan Down, lending manager, was the only witness who testified for the employer. Exhibits One, Two, and A through D were received into evidence.

**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: Raiana Hanson was employed by Wells Fargo Bank on a full-time basis from 2009 until January 4, 2011, when the employer discharged her for allegedly compromising the employer's file auditing process. Ms. Hanson held three positions with the employer. At the start of the employment, Ms. Hanson worked as a quality auditor. In February 2010, Ms. Hanson began working as a loan specialist. On November 1, 2010, Ms. Hanson commenced working as a loan underwriter. From November 1, 2010 until mid-December 2010, Loan Manager Michelle Gavin was Ms. Hanson's immediate supervisor. In mid-December 2010, Loan Manager Ryan Down became Ms. Hanson's immediate supervisor. When Ms. Hanson started her underwriting duties, she began required training in that area. Another underwriter, Joanie Brown, started in the area and in the training at the same time. The training was at least initially classroom-based with several employees participating. Loan Manager Ryan Down was not involved in Ms. Hanson's underwriting training. As part of her underwriting training, and to obtain formal authority to underwrite Farmers Home Administration (FmHA) loans, Ms. Hanson had to demonstrate underwriting proficiency by passing several audits of her underwriting files.

On January 3, 2011, Loan Manager Ryan Down became aware that Ms. Hanson had engaged in conduct that undermined the auditing process that was supposed to help the employer assess her

underwriting competency. Prior to submitting several files for audit, Ms. Hanson contacted one of her peers in her area to review the files for errors. Mr. Down obtained multiple e-mails and instant messages documenting Ms. Hanson's requests for assistance from December 6 through 22, 2010.

On January 4, 2011, Mr. Down interviewed Ms. Hanson. At that time, Ms. Hanson asserted that she was unaware that her requests for help violated the employer's policy. Mr. Down deemed the requests for assistance prior to submitting the files for audit to be a violation of the employer's code of ethics. The employer decided not to grant Ms. Hanson authority to underwrite FmHA loans and discharged her from the employment.

As part of Ms. Hanson's earlier positions with the employer, it was common to have others review a file for accuracy and consistency. As part of the classroom-based training Ms. Hanson received at the start of her underwriting position, Ms. Hanson believed it was acceptable to have peers review her files, including those that would be audited. Ms. Hanson had similarly reviewed files for her peers.

### **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 in the record establishes that Ms. Hanson acted in a manner that undermined the employer's ability to accurately assess her underwriting competence through audit of her work during a training period. But, the evidence is insufficient to establish that Ms. Hanson's actions were motivated by a willful or wanton disregard of the employer's interests. Ms. Hanson's conduct was consistent with what had been accepted and encouraged in her prior positions with the company. Ms. Hanson asserted that she and her peers had been led to believe during training that it was okay to have peers review files for one another. The employer has failed to present sufficient evidence, or sufficiently direct and satisfactory evidence, to prove otherwise. Mr. Down was not involved in the training class in which Ms. Hanson, Ms. Brown and others participated and cannot say with certainty what was conveyed by the instructor. The employer had the ability to present testimony from the class instructor, from Ms. Gavin, Ms. Brown, or from Ms. Lee, but elected not to present such testimony.

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

**DECISION:**

The Agency representative's January 28, 2011, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw