

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PATRICIA A DEFRANCISCO-WARREN
3101 VINE ST
WEST DES MOINES IA 50265

WELLS FARGO BANK
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-00571-CT
OC: 12/11/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated January 9, 2006, reference 01, which held that no disqualification would be imposed regarding Patricia Defrancisco-Warren's separation from employment. After due notice was issued, a hearing was held by telephone on February 1, 2006. Ms. Defrancisco-Warren participated personally. The employer participated by Carolyn Baker, Implementation Manager, and Queyen Chau, Corporate Security.

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. Defrancisco-Warren was employed by Wells Fargo Bank from November 7, 1997 until November 22, 2005. She was last employed full time as an implementation consultant. She had a Visa credit card and also maintained her personal checking account with Wells Fargo Bank.

On August 28, 2005, Ms. Defrancisco-Warren wrote a check for \$200.00 against her Visa credit card and deposited it to her checking account at an ATM. During the same transaction, she withdrew funds from her checking account. The check against her Visa card exceeded her available credit and, therefore, was returned to the bank for insufficient funds on September 13. Ms. Defrancisco-Warren was away from work on leave at the time and did not return until November 18. The employer spoke with her about the matter on November 22. She explained that she thought the problem was caused by a payment not being credited to her Visa account. She could provide no documentation that the incident was due to some error on the part of Wells Fargo Bank. Solely as a result of the above incident, Ms. Defrancisco-Warren was discharged on November 22, 2005. Her conduct was considered a violation of the employer's code of ethics.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Defrancisco-Warren was separated from employment for any disqualifying reason. 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). Ms. Defrancisco-Warren's discharge was not due to any matters related to her on-the-job conduct or performance. The discharge was due to her handling of her personal finances. The employer did not establish to the satisfaction of the administrative law judge that Ms. Defrancisco-Warren knew the \$200.00 check she wrote on August 28 would cause her to exceed her available credit limit. Therefore, an intentional act has not been established. See Billingsley v. Iowa Department of Job Service, 338 N.W.2d 538 (Iowa 1983). At most, she was negligent in failing to keep track of her available credit or in failing to check her credit balance before writing the check. However, an isolated instance of negligence does not constitute disqualifying misconduct. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Moreover, Ms. Defrancisco-Warren's actions did not impact on her job performance. After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, 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 January 9, 2006, reference 01, is hereby affirmed. Ms. Defrancisco-Warren was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs