

**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**

**JUDY M FLORES
4711 – 12TH AVE 5
MOLINE IL 61265**

**WELLS FARGO BANK
C/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216 1160**

**Appeal Number: 05A-UI-01502-H2T
OC: 01-09-05 R: 12
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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 4, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 1, 2005. The claimant did not participate. The employer did participate through Shelly Jones, Service Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a lead teller full time beginning December 15, 2003 through January 11, 2005 when she was discharged. The claimant allegedly falsified a document to get a rush visa check card issues for a customer. The claimant filled in her supervisor's name on

the application on two separate locations. The claimant did not read the form correctly because she was in a rush to complete the form so that she could close the bank for the evening and to get the customer the card he needed. The employer does not allege that the claimant was intentionally trying to forge the manager's signature; merely that she did not perform her job correctly because she rushed through the form without reading it correctly. The employer does not believe that the claimant had ever been required to fill out this type of form prior to her filling one out on January 10. The claimant was discharged due to allegations of not according to the employer's expectations. She had not received any warnings that her job was in jeopardy and performed the work to the best of her ability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code section 96.5-2-a is imposed.

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. The claimant was merely trying to provide good customer service and in her haste failed to fill out a form correctly. There is not evidence that she was intentionally trying to deceive anyone by filling out the form to get the customer a replacement card quickly. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The February 4, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/sc