IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHARON K WRIGHT
Claimant

WELLS FARGO BANK NA
Employer

APPEAL NO. 11A-UI-11537-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/31/11
Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wells Fargo Bank, N.A. (employer) appealed a representative's August 23, 2011 decision (reference 01) that concluded Sharon K. Wright (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on September 27, 2011. The claimant participated in the hearing. F. K. Landolphi of Barnett Associates appeared on the employer's behalf and presented testimony from one witness, Christine Pace. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2008. She worked full-time as a collector at the employer's Clive, Iowa office. Her last day of work was August 2, 2011. The employer discharged her on that date. The stated reason for the discharge was unprofessional workplace conduct after prior warning.

On July 17 the claimant was on a call with a customer who was in arrears. During the conversation, the tone between the claimant and the customer became very combative. The customer used the "f-word" several times. The claimant advised the customer to "stop throwing f-bombs;" she also told him to "grow up." She pressed him to give her a date when he would make a payment, and at one point when she told him to "give me a date," he responded that he "already had a girlfriend," to which she responded, "I wonder why." At another point when he indicated the current date, she replied, "You got something right." At yet another point when he protested that he was not a cheat, she responded that he was "cheating the bank right now." The call ended with the customer hanging up on the claimant.

Collections Supervisor Pace listened to the call as part of routine monitoring on July 20. She immediately discussed the call with the claimant and advised her that there would be further review and the potential of further discipline. The employer reviewed the claimant's record and determined that Pace had given the claimant a verbal counseling for inappropriate verbiage and tone with a customer on August 19, 2010, and on December 14, 2010 she had been given a written final warning for inappropriate verbiage and tone with a customer for a conversation in which the customer had said something was "stupid," to which the claimant replied, "I think you are."

Inappropriate verbiage and tone with a customer can be a violation of the Federal Debt Collection Practices Act, for which the employer could be found culpable. The Act requires that customers be treated with appropriate dignity and without harassment, oppression, or abuse. The employer's policies provide that behavior in violation of the Act can result in discharge. As a result of the conclusion that the claimant had committed a further violation after the prior warnings, the employer determined to discharge the claimant and did so on August 2.

The claimant established a claim for unemployment insurance benefits effective July 31, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the claimant's simply statement to the customer to "stop throwing f-bombs" was understandable and not inappropriate, she made multiple other comments that were not professional or appropriate, and which were confrontational, harassing, and abusive. Since the claimant had been previously warned, including a final warning, that such verbiage and tone was unacceptable and could lead to discharge, her repeated conduct in the July 17 call shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. While over two weeks did pass

between the date of the call and the date of the discharge, the employer did not discover the call until three days after the call and then did immediately put the claimant on notice that additional discipline could follow. Therefore, there is a current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's August 23, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 31, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/kjw