

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TROY KAPAUN**  
Claimant

**APPEAL NO. 07A-UI-07954-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY INC**  
Employer

**OC: 07-15-07 R: 01**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 9, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 4, 2007. The claimant participated in the hearing. Wendy Lee, Organizational Capability Generalist; Carissa Vaughn, Production Supervisor; and Lisa Harroff, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time testing technician for Wells Fargo from June 25, 2004 to July 17, 2007. The claimant's general work schedule was Sunday through Thursday from 3:00 p.m. to 11:30 p.m. The employer posts its work schedules one month in advance and the claimant had been scheduled to work on Fridays as needed and was scheduled to work July 13, 2007. On July 9, 2007, he e-mailed his supervisor and asked for July 13, 2007, off work to attend an "important meeting" and July 16, 2007, off because of a medical appointment. The employer granted him July 16 off but denied his request for July 13 because it was going to be short-staffed that day. The claimant e-mailed back and stated he would not and could not change his meeting and could not reschedule it. He further stated he set it up for a Friday because that was his usual day off. The claimant did not call or show up for work July 13, 2007, because he had recently obtained his associates degree and had a job interview in Sioux Falls for work in his area of study. The claimant received a written warning and five-day suspension June 18, 2007, after he misread some numbers and the employer determined he falsified company records. The employer testified he was placed on a last-chance agreement at the time but the claimant denies that he was ever told he was on a last-chance agreement. The employer terminated the claimant's employment July 17, 2007, for the no-call/no-show July 13, 2007, but testified he was "actually terminated for previous events."

## 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.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant may or may not have been on a last-chance agreement, if he was terminated for previous events, as the employer testified, his actions were not a current act of misconduct. If he was discharged for the no-call/no-show July 13, 2007, his actions were an isolated incident and do not rise to the level of disqualifying job misconduct as defined by Iowa law. The claimant was placed in a no-win situation in having to choose between going to work and going to a job interview in his new field. Additionally, although the claimant was scheduled to work on that Friday, his usual days off were Friday and Saturday and it was logical that he would schedule his interview on a Friday and he did not have many options, if any, in rescheduling his interview, which was set by

his potential employer. Therefore, the administrative law judge concludes the claimant's actions do not constitute disqualifying job misconduct. Benefits are allowed.

**DECISION:**

The August 9, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/css