

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALLY J CLIPPERTON
Claimant

APPEAL NO. 08A-UI-10230-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 10/05/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 24, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 18, 2008. The claimant participated. The employer participated by Patricia Viscaina. Exhibits One through Five were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from February 12, 2007 until July 21, 2008 when she was unable to continue working due to a verified medical condition. Ms. Clipperton held the position of customer service representative II and was employed on a full-time basis. The claimant was unable to continue working after July 21, 2008 due to severe leg and back pain and informed her immediate supervisor and the company of her need to seek medical attention from her primary physician as well as specialists. The claimant was reassured her employment would continue and was informed that she needed to have forms filled out and to supply medical documentation. Ms. Clipperton repeatedly attempted to supply the required medical documentation to the employer through her physician and reasonably believed that medical documentation had been supplied. The claimant had also been in regular contact with her immediate supervisor to report her status and had been reassured that her employment would continue. Subsequently the claimant was informed that she had not submitted sufficient medical documentation within the timeframe allowed and was being separated from her employment. At the time of separation the claimant continued to be medically unable to return to work and the employer was aware of the claimant's status and the reason that she could not work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Clipperton was discharged for misconduct in connection with the employment. It does not.

The evidence in the record establishes that the employer was aware that Ms. Clipperton could not continue to report to work due to verified medical reasons. The evidence also establishes Ms. Clipperton maintained contact with her immediate supervisor and reported her status to her supervisor on a regular basis. Although the claimant had been reassured that her employment was not in jeopardy she was nonetheless discharged from employment when the employer believed that the claimant had not supplied sufficient medical documentation by a deadline set by the company. The evidence in the record establishes that Ms. Clipperton had repeatedly had medical documentation forwarded to her employer and its insurance carrier. The evidence also establishes that the claimant was unable to return to work at the time of her discharge due to a verifiable medical condition.

As the claimant's reason for not reporting to work was due to a medical condition beyond her control and had provided notification to the employer, the administrative law judge concludes that the claimant's separation from employment took place under nondisqualifying conditions.

The question in this case is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Clipperton may have been a sound decision from a management viewpoint, intentional disqualifying misconduct on the part of the claimant has not been shown.

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.

DECISION:

The representative's decision dated October 24, 2008, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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