

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KAYLA WRIGHT**  
Claimant

**WELLS FARGO BANK NA**  
Employer

**APPEAL NO. 14A-UI-06303-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/25/14  
Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 10, 2014. Claimant participated personally. Employer participated by Steven Zaks. Employer's Exhibit A was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 28, 2014. Employer discharged claimant on May 28, 2014 because claimant was accused of call avoidance on a number of phone calls made to clients.

Call avoidance is defined by employer as including sitting on calls or not speaking when a client answers the phone or hanging up when a client answers. Sitting on calls occurs when an answering machine picks up the phone and the representative does not move right on to the next call.

Employer introduced an exhibit which detailed 15 instances of call avoidance that occurred on May 21, 2014. Employer randomly monitors calls of agents to make sure proper procedures are followed. In the exhibit, employer lists four instances where claimant sat on voicemail for up to 50 seconds. Additionally, there were multiple instances where a customer says, "hello" and there is no response from the agent, and multiple instances where up to 8 seconds of "dead air" occur after customers have answered the phone. Claimant stated that she was finishing conversations she was having with others while sitting on the answering machine calls or training individuals or working at other tasks during her dead air time. Employer disputed that she could have been training others as claimant's work product was not such that employer would use her as an example for training purposes.

Employer stated that the employee handbook, which is available online, speaks to call avoidance. Claimant said she never received an employee handbook, but had some initial discussions of call avoidance when hired over a year ago, but didn't remember the specifics of it. A month prior to claimant's termination, another employee of employer was terminated for call avoidance. Claimant's supervisor held a "huddle" wherein employees were told that there was a zero tolerance policy when it came to call avoidance. Additionally claimant stated that she was not a part of the "huddle". Claimant did say that her manager met with her privately after she missed this meeting, but the discussions did not center on there being no progressive disciplinary policy for call avoidance.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

In order for misconduct to be found, an employee must have a willful act or omission which constitutes a material breach of worker's duties. While claimant's acts may unquestionably be called inefficient and less than satisfactory conduct, willfulness has not been shown.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning call avoidance. It has not been shown that claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant's actions, while inefficient, were not shown to be willful. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 12, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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