

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH PETERS
Claimant

APPEAL NO. 08A-UI-08141-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

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

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated September 3, 2008, reference 01. The decision allowed benefits to the claimant, Elizabeth Peters. After due notice was issued a hearing was held by telephone conference call on September 25, 2008. The claimant participated on her own behalf and was represented by Charles Gribble. The employer participated by Vice President of Card Services Lori Long and was represented by TALX in the person of Patton Bennett.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Elizabeth Peters was employed by Wells Fargo from January 29, 2007 until August 12, 2008 as a full-time technology program manager. At a regular one-on-one telephone conference between Ms. Peters and Vice President of Card Services Lori Long, it was discovered an e-mail sent to the claimant about a meeting had ended up in her personal e-mail account on Google. Accessing personal e-mail accounts on company computers and networks is against policy. When Ms. Long questioned her about how the e-mail ended up in her personal account, she gave various explanations, none of which sounded correct to the employer.

The matter was referred to a human resources representative, Susan Thompson, and the EFO, the department which monitors the computer system. The claimant was advised the next day by Ms. Long not to access her personal e-mail account and not to forward any other company related documents to that account. The EFO representative indicated no changes had been made to the automatic settings on the claimant's computer and any forwarded e-mails had to have been done manually.

After that e-mails continued to be forwarded to the claimant's personal e-mail account, which was outside the Wells Fargo system. The EFO department had been approached by the claimant to provide a written statement for her certifying she had not forwarded any of the

e-mails to her own account manually. However, since an investigation had been formally started, the EFO representative could not respond to her request. Ms. Peters was interviewed on August 8, 2008, by Ms. Thompson and an investigator from another state. At that meeting she acknowledged she had contacted Microsoft technical support to check on the settings of her computer. This was apparently a violation of company policy as Microsoft was not an authorized vendor, at least as far as the information being requested by the claimant.

The investigation concluded and it was determined the claimant had accessed a personal e-mail account at work, forwarded work-related material to that account and continued to do so after being advised to stop. She admitted to transferring some e-mails to her personal account temporarily in an attempt to "clean out" her work computer and that the personal account was on a private system similar to that used by Wells Fargo. She denied forwarding any e-mails after being advised to stop and contacted Microsoft to try to find out why her work computer was automatically forwarding material to her personal account.

On August 12, 2008, Ms. Peters was discharged by Ms. Long and Technical Manager James Bierl.

REASONING AND CONCLUSIONS OF LAW:

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 proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to present any definite proof of misconduct. Ms. Long acknowledged claimant's error in using her personal e-mail account at work would be subject to disciplinary action, but not discharge. It was the continued forwarding of the e-mails after the warning and using an "unauthorized" vendor to try and find out the source of the problem which resulted in the discharge. However, Microsoft is a vendor of the employer and it is uncertain how the employer expected the claimant to know which vendors would be authorized to do what.

Ms. Peters appears to have been attempting to find out the reason for the e-mails being forwarded by her computer when she denied doing so manually. She could not get information from the EFO department and this limited her options. There is nothing to indicate she was obligated to wait passively for the employer's internal investigation without making any effort herself to resolve the situation. The employer did not provide any information from the EFO investigation which explained the technical aspects of the situation.

The record establishes the claimant was discharged for poor judgment in certain matters relating to the use of the computer. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge cannot conclude the employer met its burden of proof in this matter and disqualification may not be imposed

DECISION:

The representative's decision of September 3, 2008, reference 01, is affirmed. Elizabeth Peters is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs