

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA M CHARLIER**  
Claimant

**APPEAL NO. 10A-UI-13144-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 07/25/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 17, 2010, reference 01, that denied benefits based upon her separation from Wells Fargo Bank NA. After due notice, a telephone hearing was held on November 2, 2010. The claimant participated personally. The employer participated by Mr. Larry Lampel, Hearing Representative and witness, Shane Smith, Collections Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Angela Charlier was employed by Wells Fargo Bank NA from November 16, 2009 until July 26, 2010 when she was discharged for excessive tardiness. Ms. Charlier worked as a full-time collector and was paid by the hour. Her immediate supervisor was Liz Nicholson.

Ms. Charlier was discharged from employment on July 26, 2010 after she returned from lunch 11 minutes late on July 23, 2010. Company employees are expected to be at their work location and ready to begin performing services for the company at the beginning time of their shift and after returning from breaks and lunch. Employees are aware of the company's expectations through orientation and the company's handbook.

Prior to being discharged Ms. Charlier had received a number of warnings for tardiness. A final written warning was issued to the claimant on July 19, 2010 and at that time the claimant was informed that the next punctuality infraction could result in her termination from employment. The claimant was discharged when she continued to report back to her workstation late.

Although Ms. Charlier believed that her immediate supervisor was checking her punctuality more carefully than other employees and also believed that she had a reasonable excuse for returning to her workstation late on July 23, 2010, Ms. Charlier did not dispute her discharge by

going up the chain of command above her supervisor or by going to the company's human resource department.

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

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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 Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism was a form of job misconduct. The court held that the concept included tardiness, leaving early, etcetera. The evidence in the record establishes that Ms. Charlier had been warned on a number of occasions about her failure to report to work in a timely manner. The evidence in the record establishes that the claimant was most recently warned and given a final written warning on July 19, 2010. At that time Ms. Charlier was warned that any further tardiness could result in her termination from employment. The claimant nevertheless returned to her workstation 11 minutes late on July 23, 2010, whereupon she was discharged from employment.

The evidence in the record establishes that employees are not allowed to report back to their workstations after the specified amount of break or lunch time has elapsed and that visiting with other employees, even for business reasons, is not considered to be a good cause reason by

the employer for reporting to work late. Based upon the previous warnings and the final warning that was served upon Ms. Charlier, the administrative law judge concludes that the claimant's repeated failure to report back to work in a timely manner showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Employment Security Act. Benefits are withheld.

**DECISION:**

The representative's decision dated September 17, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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