

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON W SPECK
Claimant

APPEAL NO. 12A-UI-04103-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/11/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 6, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 3, 2012. Claimant participated. Employer participated through loan adjustment supervisor, Courtney Nebilles and was represented by Judy Berry of Barnett Associates Inc. Claimant had not received the employer's proposed exhibits sent via FedEx on May 2, 2012 by the time of the hearing at 10:00 a.m. on May 3 so they were not included in the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a loan adjustment specialist and was separated from employment on March 13, 2012. On March 7 Nebilles sent him an e-mail with a list of outstanding files with changes he needed to make. He went to her office and resisted her suggestions and direction. He elevated his voice and became irritated. He left and returned about ten minutes later. Nebilles told him they would not discuss it any longer as she had another appointment. He stood up and said it was "bullshit." She told him to move. He did not and continued to express his irritation. She told him to leave and he responded that he was not preventing her from leaving. She said if he did not leave her cubicle she would call security. He left.

Loan adjusters are expected to take incoming calls and be available for two to three hours. Nebilles e-mailed him on December 28 and told him to be available. He was available for 46 minutes. On December 30, 2011 in a meeting about the issue Nebilles told claimant her manager told her she could hold deals back from him if he did not make himself available. She warned him about the possibility and he became upset and argumentative. He was placed on a warning. On October 31, 2011 she sent him an e-mail to correct his timecard after the entire floor was directed to be accurate in recording time. He became upset and Nebilles told him it was not a big deal since there were others with the same issue. He continued to be

argumentative. On June 15, 2011 a warning was issued after he failed to submit his work for peer review to ensure accuracy and that his work meet department expectations. He argued with Nebilles about the department requirement.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The employer has presented substantial and credible evidence that claimant repeatedly failed to follow Nebilles' instructions without becoming argumentative after having been warned. This is evidence of deliberate disqualifying job-related misconduct. Benefits are denied.

DECISION:

The April 6, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css