

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KALEN SPENCER
330 HOLIDAY CIR
WEST DES MOINES IA 50265-8208

WELLS FARGO BANK
C/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-02238-JTT
OC: 01/29/06 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank filed a timely appeal from the February 13, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 14, 2006. Supervisor Ruth Bethards represented the employer and presented additional testimony through Manager Steve Plotner. Claimant Kalen Spencer participated. Exhibits One through Four were received in evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kalen Spencer was employed by Wells Fargo Bank through January 25, 2006, when Supervisor Ruth Bethards, Manager Steve Plotner, and the Wells Fargo Bank human resources department discharged her.

The final incident that prompted the discharge occurred on December 30, 2005. On that date, Ms. Spencer recorded her time worked as beginning at 7:15 a.m. and ending at 4:00 p.m. Ms. Spencer had in fact come to work at 7:47 a.m. and left work at 12:42 p.m. When Ms. Spencer's immediate supervisor, Ruth Bethards, returned to work after the holiday, she noted that the amount of work Ms. Spencer had performed on December 30 was not commensurate with the number of hours Ms. Spencer had recorded having worked. Ms. Spencer had performed roughly one-sixth of the work the employer would have expected her to perform on her average full workday. On January 3, 2006, Ms. Bethards met with Ms. Spencer and questioned Ms. Spencer about the discrepancy between the amount of work performed and the number of hours reported. Ms. Spencer told Ms. Bethards that she had been ill on December 30 and had spent a great deal of time in the restroom, away from her desk. Ms. Spencer did not tell Ms. Bethards that she had left work early. Ms. Bethards' discussion with Ms. Spencer did not resolve Ms. Bethards concern. Ms. Bethards requested records from the employer's security department regarding Ms. Spencer's arrival and exit from the building on December 30. The security department generated the requested records on January 13. Ms. Bethards was out of the office for a class between January 16-20. In the meantime, the security department provided the requested documents to the human resources department. When Ms. Bethards returned to work on January 23, there was a message waiting for her from the human resources department indicating that the security records were available.

On December 24, Ms. Bethards collected the security records from the human resources department. Later that day, Ms. Bethards and Manager, Steve Plotner, met with Ms. Spencer to discuss the discrepancy between the security records and Ms. Spencer's reported time for December 30. When the employer confronted Ms. Spencer with the documentation of her entrance to and exit from the building on December 30, Ms. Spencer admitted that she had left work early on December 30, but had recorded that she worked a full day. Ms. Bethards reported the incident to the human resources department. The human resources department determined that Ms. Spencer should be discharged from the employment. Ms. Bethards and Mr. Plotner carried out the discharge on January 25.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Spencer was discharged for misconduct in connection with the employment that would disqualify her for unemployment insurance benefits. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

The preponderance of the evidence in the record establishes that on December 30, Ms. Spencer intentionally reported that she had worked a full day when she had in fact gone home over the lunch hour. The administrative law judge finds not credible Ms. Spencer's assertion that she went home early because she was sick. No later than January 3, the employer was aware of the discrepancy between the amount of work Ms. Spencer had performed on December 30 and her recorded hours of employment for December 30. Between January 3 and January 24, the employer engaged in an unreasonable delay in taking further action concerning the apparent misconduct. By the time the employer discharged Ms. Spencer on January 25, the misconduct of December 30 no longer constituted a "current act" that might serve as a basis for disqualifying Ms. Spencer for unemployment insurance benefits. See 871 IAC 24.32(8).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Spencer was discharged for no disqualifying reason. Accordingly, Ms. Spencer is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Spencer.

DECISION:

The Agency representative's decision dated February 13, 2006, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/kkf