IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMY J DURGIN
Claimant

WELLS FARGO BANK NA
Employer

APPEAL NO. 12A-UI-07942-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/03/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the June 25, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on August 1, 2012. Claimant participated with Bobbi James. Employer participated through service manager Amy Stanbaugh, and store manager Reid Peterson and was represented by Mary Otu of Barnett Associates Inc.

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 teller and was separated from employment on June 4, 2012. She was discharged because of allegedly force balancing on April 23 and April 27. A customer brought in a letter on May 1 stating their deposit was incorrect and they were debited $100.00. Stanbaugh asked claimant about the transaction but did not tell her this was considered a forced balance, inform her she would be investigated and may be discharged, or place her on any kind of leave pending investigation. On May 5 another customer made a similar complaint but Stanbaugh did not ask her about this and referred the matter to investigation on May 7, 2012. The first time claimant was aware either incident was an issue that might jeopardize her job was during the termination phone call with the investigator Whitney Giles, Peterson and Stanbaugh. There were three internal discussions before the decision was made to terminate employment. The employer did not present a good cause reason for the delay between the knowledge of the incidents and the separation more than a month later or why it took an investigator three weeks to conclude the investigation when the claimant was not interviewed until the meeting in which she was discharged. Claimant did not admit to force balancing her drawer but indicated she did not steal the money and if force balancing was the remaining option, “then I guess that’s what I did.” She did not understand what force balancing is. It makes a cash drawer look like it balances when it does not. This is considered intentional

falsification of company records and may result in immediate discharge. She had an informal warning on February 15, 2012 for cash differences of more than $200.00 in three-month period. A couple of weeks earlier her drawer was over $800.00 and she accepted that discrepancy. The week before the separation the employer removed her preapproved vacation for Memorial Day week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 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.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa 1988).

Claimant's lack of understanding of force balancing and opting to accept responsibility for that in lieu of theft is not an admission. Inasmuch as employer had knowledge of the final incidents on May 1 and 5, 2012, it did not notify claimant she was the subject of an investigation or place her on notice that her job might be in jeopardy because of it, and it did not present a good cause reason for the three to four week delay in the discharge, it has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The June 25, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs