

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA J FIRKINS

Claimant

APPEAL NO. 14A-UI-01895-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 01/12/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated February 10, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 11, 2014. Claimant participated. The employer participated by Mr. Kelly Landolphi, Hearing Representative, and witnesses: Mr. Val Morton, Service Manager, and Ms. Melissa Butz, Facility Manager. Employer's Exhibits A, B, C, and D were received into evidence.

ISSUE:

The 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: Carla Firkins was employed by Wells Fargo Bank NA from January 19, 2010 until January 10, 2014, when she was discharged from employment. Ms. Firkins was employed as a full-time bank teller and was paid by the hour. Her immediate supervisor was Mr. Val Morton.

The claimant was discharged on January 10, 2014 for failure to follow the bank's loss exposure guidelines. On that date, the claimant had left her teller station during a team huddle for the purpose of letting a family member into her vehicle which was parked outside and locked. While the claimant was outside, Melissa Butz, the facility manager, noted that the claimant had left her computer unlocked while away from her station in violation of the bank's loss exposure guidelines. Although the bank had not yet opened for business that morning, leaving the computer unlocked was considered to be a serious violation because it could have been manipulated by other employees for their own purposes, in Ms. Firkins' absence. Because Ms. Firkins had previously been warned for failure to follow the bank's loss exposure guidelines, a decision was made to terminate Ms. Firkins from her employment.

Ms. Firkins had been issued an informal warning by the bank on September 20, 2013 for failure to lock her computer screen when more than an arm's length away from the computer and also was warned about not locking her cash drawer and leaving her keys out on the drive-through counter. Each infraction was a violation of the bank's loss exposure policies. On December 3, 2013, Ms. Firkins was issued a formal warning for loss exposure when the claimant was observed being away from her computer screen and leaving it unlocked and for leaving \$2,000 in \$100 dollar bills unattended at her lobby teller station while assisting a customer at a different teller station. The employer also cited additional instances where Ms. Pirkins had left her station keys in another part of the bank unattended and again had been away from her computer leaving it unlocked. The claimant was further warned that additional violations of the bank's loss exposure policies would result in termination from employment.

It is the claimant's position that she believed that her computer was locked on the morning of January 9, 2014, but found out when she returned from being outdoors, that the computer had not been locked as required. It is Ms. Pirkins' further belief that the warnings that had been served upon her and her discharge from employment were based on a personal dislike by Mr. Morton and were unjustified. Although Ms. Pirkins believed that Mr. Morton was unduly scrutinizing her work and the work of two other female employees, the claimant did not use an available hotline to contact a human resource advisor for the purpose of resolving her concerns. Information regarding the human resource advisor option was provided to the claimant with each informal and formal warning. Ms. Pirkins chose to use counseling that was available to her through the company to resolve personal issues.

It is the claimant's belief that her discharge was motivated by a desire to remove her as an employee and not because she had engaged in disqualifying misconduct.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her work. It does.

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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

In the case at hand, the claimant had received training on the bank's loss exposure guidelines and expectations. The purpose of the guidelines are to insure that employees are aware of the bank's expectations and minimize any risk of loss to the bank by securing keys, locking computers when the employee is away from them and making sure that bank cash funds are secure.

Wells Fargo Bank was reasonable in issuing the claimant an informal warning when it was known that she was not following the loss prevention procedures. The claimant acknowledged the warning and did not dispute the basis for the warning or contact the company human resource advisor to assist her in resolving any workplace concerns that she may be having. Information about contacting the human resource advisor is provided on each warning to employees. Claimant subsequently was issued a formal written warning for leaving cash unattended and to lock her computer when not nearby and leaving access keys unsecured. Claimant was placed on warning at the time of the December 3, 2013 warning that future violations could result in her termination from employment. Claimant was discharged when she again violated company computer policy by leaving her computer unlocked and accessible to others while Ms. Pirkins temporarily left the building to assist somewhat outside on January 9, 2014. The claimant's computer was observed by the facility manager who noted that the claimant's computer was not locked as required and accessible to others for unauthorized transactions even though the bank had not yet opened for business that morning.

Based upon the evidence in the record, the administrative law judge concludes that although Ms. Pirkins may not have intentionally violated the bank's loss prevention policies on a recurring basis, the claimant's negligence or carelessness was of such a degree so as to manifest culpability under the provisions of the Employment Security Law. Although claimant was aware of the policies and had been specifically warned, she repeatedly left keys, computers and/or cash unsecured and vulnerable to theft or manipulation by others.

Although the administrative law judge is aware of the claimant's assertion that the employer's intention was to discharge the claimant and two other female workers, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are, therefore, withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated February 10, 2014, reference 01, is affirmed. 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 and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs