

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE A BIEGHLER**  
Claimant

**APPEAL NO. 09A-UI-10278-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 06/07/09**  
**Claimant: Respondent (1)**

Section 96.5-2-A -- Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 10, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 4, 2009. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Nicole Bieghler.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed in the collections department and began working for the employer on October 22, 2007. She was terminated on June 9, 2009. The reason for her termination was that she sent an email to a friend, using the employer's email, to ask if that friend was in a relationship with a co-worker. The co-worker saw the email and complained to management, saying that she felt she was being talked about. The claimant was then terminated on June 9, 2009, for sending that email.

The employer did permit employees to use its email to send short messages while on break. The claimant sent this email that led to her termination while she was on break. She had been given one prior warning the year before for sending some pictures that were on a MySpace page.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct is found in deliberate acts or omissions that constitute a material breach of the worker's duty to the employer or in repeated acts of carelessness or negligence. Good faith errors in judgment or discretion are not deemed misconduct within the meaning of the statute. The employer has the burden of proof to show misconduct.

The evidence established that the claimant was discharged for sending an email about a co-worker. The claimant asked a friend if he was in a relationship with a co-worker. This email was then read by the co-worker, who felt she was being talked about. Although the claimant showed poor judgment in sending a personal email to a friend about a co-worker, this appears to have been an isolated incident and not a pattern of conduct. There was a previous warning about the use of email, but it had been given the year before. Misconduct has not, therefore, been shown. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated July 10, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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