

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

ARICHICA D HOLT
554 WALKER ST
DES MOINES IA 50316

WELLS FARGO BANK
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-12109-DT
OC: 10/30/05 R: 02
Claimant: Appellant (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

STATEMENT OF THE CASE:

Arichica D. Holt (claimant) appealed a representative's November 17, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on December 15, 2005. The claimant participated in the hearing. Lisa Epperly appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 25, 2005. She worked full time as a customer care representative at the employer's Des Moines, Iowa home equity call center. Her last day of work was November 2, 2005. The employer discharged her on that date. The stated reason for the discharge was giving another employee her login password information and logging her into the payroll and phone system.

The claimant was scheduled to work from 9:30 a.m. to 6:00 p.m. on October 29, 2005. At approximately 9:30 a.m., another supervisor came by the claimant's desk and noticed she was not there, but saw another employee at the desk. The employer subsequently did a check comparing the claimant's badge entry time swipe with her login time to the payroll system and the phone system. The badge entry swipe time was 9:36 a.m.; the payroll time entered was 9:30 a.m., and the phone log in was 9:31 a.m.

When Ms. Epperly and the other supervisor confronted the claimant with this information on November 2, the claimant did not initially admit to having had someone log in for her, but later in the conversation she acknowledged that as she was approaching the building she had called a coworker and had that coworker log her into the phone and the payroll system. The employer's policies prohibit the sharing of password information, the entry of false information, or having an employee log in for another employee. At the hearing, the claimant denied that she had admitted having anyone log in for her, and sought to present the witness testimony of the coworker who the employer believed had logged her in, who the claimant believed would testify that she did not log the claimant in. However, despite multiple attempts to contact the witness, the witness was not available.

The claimant's only other explanation for the time discrepancy between the badge time swipe and the other log ins, and why the supervisor did not see her at 9:30 p.m., was that the time system for the badge swipe might not have been accurate or calibrated the same as the payroll or phone system, and that while she might have been a minute or two late arriving, she was in the work area by approximately 9:31 a.m., but may have gone to the restroom at the time the other supervisor went by. Under the information provided, the administrative law judge finds the employer's version of events to be more credible.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.5-2-a.

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 claimant's having the other employee log her into the payroll system and the phone system and having it reflect an incorrect time shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 17, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 2, 2005. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

ld/pjs