

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE M SIMS

Claimant

APPEAL NO. 11A-UI-04348-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO FINANCIAL NAT'L BANK

Employer

OC: 02/27/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 24, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 28, 2011. Claimant participated. Employer participated. Employer's Exhibit 1 was entered evidence for the record.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was discharged on March 1, 2011. The last act of the employment considered in the decision to discharge was a conversation that the claimant had with a mentor on February 24, 2011. The claimant engaged into a detailed series of questions of the mentors religion, religious practices, and underwear to the point that the mentor became uncomfortable and reported the conversation. The same morning the claimant inappropriate questioned trainers on their qualifications to train her.

The claimant had been placed on a final written warning on April 2, 2010 for inappropriate comments at work. This final warning followed previous warnings and counseling regarding inappropriate language and outbursts to customers and team members both.

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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence establishes that claimant was discharged for an act of misconduct when claimant was discharged for engaging a mentor in an inappropriate conversation after having had various warnings regarding inappropriate language and outbursts at work. This is a disregard on a continuing basis of the behavior the employer has the right to expect of its employees.

DECISION:

The decision of the representative dated March 24 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/css

