

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON E SHELBURG
Claimant

APPEAL NO. 11A-UI-15162-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 10/09/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 16, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 15, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Kathy Anderson. Steve Zaks participated in the hearing on behalf of the employer with witnesses, Lee Race and Troy Sheets. Exhibits One, A, and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a technical service specialist from December 12, 2005, to October 7, 2011. His primary job duties were to take and respond to inbound phone calls from Well Fargo team members requesting technical service. The claimant was informed and understood that under the employer's work rules, employees were prohibited from avoiding taking calls by purposely staying on an outbound call, which would prevent inbound calls from coming in.

Up until October 3, 2011, the claimant was in the Work from Home program, which permitted him to perform his job from his residence. On October 3, the claimant's supervisor, Lee Race, issued a formal warning to the claimant and removed him from the Work at Home program due to excessive unpaid time off incidents. He was informed that he was required to report to work onsite on October 4, 2011, with his Wells Fargo computer and other equipment.

The claimant failed to report to the office as Race had instructed to do on the morning of October 4. He did not inform Race that he was not reporting to work. Instead, he logged into his phone as if he was starting work from home. Race had the ability to remotely monitor the claimant's computer and phone activity and observed the claimant make an outbound call and hit some digits on his keyboard. The line was tied up for about three hours, and Race observed no computer activity on his screen.

The claimant reported to the Des Moines office on the afternoon of October 4 after Race had his remote access disabled. Race called the claimant at the office and asked him what had happened that morning. The claimant asserted that he was having car problems and had logged in from home. When Race asked him what he was doing at home, he said he was on the phone taking calls. After Race explained that he had monitored the claimant being on an outbound call for an extended period of time, the claimant then said he was on the phone waiting for service calls.

On October 5, Race ran reports on the claimant's outbound calls and discovered the claimant had made outbound calls to the same number as he had called on October 4 over 300 times since July 2010 and had spent over 200 hours in outbound status. When he contacted the person assigned to the number, he discovered she was an employee in the mortgage department who had been receiving repeated calls, but when she would answer, there would be no one on the line.

On October 6, Race spoke again with the claimant and asked him about the repeated outbound calls to the mortgage consultant's number. The claimant asserted he had used the number as a test line when he was having phone or headset issues. Race recommended to management that the claimant be discharged due to having excessive unscheduled absences and had violated the employer's call avoidance rules.

On October 7, 2011, the employer discharged the claimant because he had practiced a behavior of placing inappropriate and/or unnecessary outbound calls more than 392 times during the past year.

The claimant's assertion that he had made the calls to the mortgage consultant's phone as test calls was untruthful. The purpose of the calls was to avoid receiving inbound calls while the outbound call was connected.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony about using the mortgage consultant's number as a test number he called because it was stored as a dialed call in his phone system is not credible. I believe Race's testimony about overhearing the claimant dial the number and then hearing silence followed by a rapid busy signal for three hours. There was no way the claimant was waiting to take calls during this time not knowing that the phone was

tied up. I believe that the claimant initially claimed he was taking calls that morning and then changed his story when he knew there would be no activity to support this assertion. All this undercuts the claimant's credibility.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 16, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css