

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

STEPHANIE L SOTH
Claimant

APPEAL NO: 18A-UI-09249-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/29/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 29, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 24, 2018. The claimant participated in the hearing. Elizabeth Carstensen, Customer Service Supervisor and Thomas Kuiper, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time inbound/outbound customer service representative for Wells Fargo Bank from August 3, 2015 to July 31, 2018. She was discharged for inappropriate language and behavior toward her team leader.

On July 23, 2018, the claimant went into the office after break and confronted her team lead "Chuck." She said, "You're a fucking asshole and a piece of shit. Don't you ever talk to me like that again. You are a piece of shit. Don't ever talk to me again." Customer Service Supervisor Elizabeth Carstensen observed the claimant's behavior, as did other employees, and removed the claimant from the call floor. Ms. Carstensen directed the claimant to the conference room where she discussed the claimant's violation of professionalism. She left the claimant in the conference room to calm down while she spoke to her manager and they decided to send the claimant home for the remainder of the day. Ms. Carstensen submitted a request to Human Resources to find out what her next course of action should be and the claimant returned to work July 24, 2018. Human Resources notified Ms. Carstensen to terminate the claimant's employment July 31, 2018, for violation of the employer's code of conduct and ethics.

The claimant's only previous written warning was for attendance December 5, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant used profanity several times when addressing her team leader in front of several employees and the customer service supervisor July 23, 2018. She knew or should have known that her language and behavior violated the employer's code of conduct and ethics and that her outburst would result in termination of her employment. While the claimant denied

using profanity with the exception of calling her team leader an “asshole” three times, her testimony was not as credible as that of Ms. Carstensen.

Under these circumstances, the administrative law judge concludes the claimant’s conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer’s interests and the employee’s duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The August 29, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn