IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CAROLYN L POWER
Claimant

WELLS FARGO BANK NA
Employer

APPEAL NO. 09A-UI-15409-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 09/13/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wells Fargo Bank, N.A. (employer) appealed a representative's October 5, 2009 decision (reference 01) that concluded Carolyn L. Power (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2009. The claimant participated in the hearing. Kii Elliott of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Brenda Witmer. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 August 29, 2009. Since April 25, 2007 she worked full-time as an operations processor in the employer's Des Moines, Iowa, area merchant payment solutions operations center. Her last day of work was September 16, 2009. The employer discharged her on that date. The reason asserted for the discharge was a complaint that she had made an offensive comment toward a coworker.

The claimant had recently been issued some written warnings for a variety of issues, including allegedly making insensitive statements toward coworkers; the most recent warning was given to her on July 2, 2009, covering several concerns including an allegation that the claimant had made an age-discriminatory comment by saying that she did not want the employer to hire someone younger than in their 30's. That written warning indicated it was "in effect for 60 days expiring on September 1, 2009." There was no place on the warning for the claimant to note any disagreement with the issues addressed.

The employer asserted that on September 10 a coworker had complained that sometime prior to that date the claimant had told him to "sit your fat ass down." When confronted on September 16, she did not admit making this statement. During the hearing, the claimant denied under oath making this statement. No firsthand testimony to the contrary was provided.

REASONING AND CONCLUSIONS OF LAW:

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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the allegation that she made the comment that the coworker should sit his "fat ass down" on an unspecified date prior to September 10. Assessing the credibility of the witnesses and the reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made such a statement. The employer has not met its burden to show a current act of disqualifying misconduct. Cosper, supra. Based upon the evidence provided, benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's October 5, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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