

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFEREY L GRIFFETH
Claimant

APPEAL NO. 08A-UI-11354-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 10/26/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated November 25, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 17, 2008. The claimant participated personally. Participating on behalf of the claimant was Ms. Michelle Synarong, Attorney, Legal Aid Society. The employer participated by Mr. Dean Howard, Collections Supervisor.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from November 19, 2007 until October 24, 2008 when he was discharged from employment. Mr. Griffeth held the position of full-time collector I and was paid by the hour. His immediate supervisor was Dean Howard.

On October 23, 2008, the claimant left a message indicating that he was going to be late in reporting to work. Subsequently the claimant recontacted the employer to indicate that he would not be reporting as he had been involved in a car accident. On Friday, October 24, 2008, Mr. Griffeth was unable to report to work because of the effects of the car accident and notified the employer by leaving a message on his supervisor's voicemail. Subsequently, the claimant received a message back from his supervisor stating, "Your services are no longer needed." Mr. Griffeth reasonably concluded the statement to mean that he was discharged from employment and did not again report for work or contact the employer.

Mr. Griffeth has a medical/psychological condition that requires prescription medication. It is the claimant's position that it is essential for him to maintain insurance coverage through employment and, therefore, he would not have quit employment. In the week or weeks

preceding the claimant's separation from employment a number of employees of Wells Fargo Bank were separated from employment due to economic conditions and the employer had indicated that further cuts in staffing might be forthcoming.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Griffeth was discharged for intentional disqualifying misconduct. It does not.

The testimony in this case is disputed. The administrative law judge having considered the evidence in the record and the testimony of the witnesses concludes that the claimant was discharged from employment and did not choose to voluntarily quit his employment with Wells Fargo Bank NA. The claimant and other workers had previously been warned that staffing cuts might be forthcoming and the claimant testified that a number of staffing cuts had been made by the employer prior to his discharge from employment. Based upon the claimant's ongoing need for insurance coverage to pay for expensive prescription medications, the administrative law judge finds the claimant's testimony he did not quit his job to be credible.

The question in this case is not whether the employer has a right to discharge an employee but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Griffeth may have been a sound decision from a management viewpoint intentional disqualifying misconduct at the time of separation by this claimant has not been shown. It must therefore be held the claimant was dismissed under nondisqualifying conditions.

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.

DECISION:

The representative's decision dated November 25, 2008, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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