

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA K GOLDSBERRY
Claimant

APPEAL NO: 13A-UI-10140-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 08/04/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sandra K. Goldsberry (claimant) appealed a representative's August 27, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Wells Fargo Bank, NA (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2013. The claimant participated in the hearing and was represented by Michael Dunbar, Attorney at Law. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 31, 2011. She worked full time as a home mortgage consultant in the employer's Waterloo, Iowa office. Her last day of work was August 6, 2013. The employer discharged her on that date. The reason asserted for the discharge was having issued a fraudulent document.

In November 2012 the claimant issued a preapproval letter, subject to underwriting, for a past customer without requiring that customer to complete an actual loan application. The claimant was familiar with that customer's qualifications. It is common industry practice for a preapproval letter to be issued without an actual loan application where the person handling the preapproval has sufficient knowledge of the customer's qualification. The preapproval did not commit the employer to granting any loan without underwriting approval. In fact, the customer ultimately

purchased the property in question outright with cash, and did not obtain a loan from the employer.

In May 2013 the employer performed an internal audit in which this letter was apparently flagged. The claimant was unaware there was any inquiry or issue until she received an investigative call on July 15. The employer ultimately discharged the claimant.

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 which 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 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. 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 conclusion that her issuance of the preapproval letter in November 2012 was issuance of a fraudulent document. "Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established." 871 IAC 24.32(4). The employer did not participate in order to provide evidence to establish that the claimant's issuance of the preapproval letter constituted misconduct. Further, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred nine months prior to the employer's discharge of the claimant, and the employer was on notice of the issuance of the letter for at least two months before even contacting the claimant regarding the letter. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 27, 2013 decision (reference 01) is reversed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css