

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENETTE MARTENS
Claimant

APPEAL NO: 10A-UI-17476-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 11-07-10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 13, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 2, 2011. The claimant participated in the hearing. Christin Slorah, District Manager and Larry Lampel, Employer's 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 assistant store manager for Wells Fargo Bank's retail bank from January 5, 2009 to November 5, 2010. On November 3, 2010, the claimant was going through teller referrals and contacting customers on the list to address their banking needs. She had a customer's profile on her computer and was preparing to call him when another customer came into her office and instead of hitting the button to exit the profile she accidentally and unknowingly hit the send button which resulted in a debit card being ordered for the customer without his consent and agreement. She did not realize she had done so or that another banker was working with the customer. On November 4, 2010, the other banker who was working with the customer questioned District Manager Christin Slorah about why a debit card was ordered when the customer had not been contacted. Ms. Slorah asked the claimant about the incident when they passed in the hallway and the claimant said she talked to the customer on the phone which indicated he gave permission for her to order the debit card. Ms. Slorah questioned the claimant about the incident again because she learned from the other banker that the customer does not speak English so he could not have given permission. The claimant checked the transaction after Ms. Slorah first asked her about it and realized she made a mistake. She told Ms. Slorah she made an honest mistake and it was wrong and apologized for her error. Ms. Slorah sent her home for the day and told her not to come in the following day. On November 5, 2010, the employer notified the claimant her employment was

terminated. The claimant had not received any verbal or written warnings about anything during her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant accidentally hit "send" rather than "clear session" when she had the customer's profile on her computer preparing to call him about a debit card when another customer came to her office. She did not realize her error until after Ms. Slorah first asked her about it in the hallway and she went back and checked to see what she did. When Ms. Slorah confronted her about the situation again the claimant admitted her "stupid mistake," said she knew it was wrong and apologized. The claimant had not received any previous warnings and this was clearly a mistake and an isolated

incident. One mistake in nearly two years does not constitute disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving misconduct. Therefore, benefits are allowed.

DECISION:

The December 13, 2010, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css