

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSHUA J SHERIDAN**  
Claimant

**WELLS FARGO BANK NA**  
Employer

**APPEAL 24A-UI-08208-ED**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/18/24  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Claimant, Joshua Sheridan, filed an appeal from a decision of a representative dated September 12, 2024, (reference 02) that held claimant was ineligible for unemployment insurance benefits after a separation from employment. After due notice, an in-person hearing was scheduled for Des Moines, Iowa and held on October 22, 2024. Claimant, Joshua Sheridan, participated personally. Mr. Sheridan was represented by attorney, Kevin Brown. Employer, Wells Fargo Bank NA, participated by witness, Shane Smith and hearing representative appearing by telephone, Thomas Durso. Claimant's Exhibits A, B, C, and D were offered and admitted. The Employer's Exhibits 1 and 2 were offered and admitted.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Mr. Sheridan began working for this employer on June 26, 2017 as a full-time Escalation Specialist. His last day physically working for this employer was August 19, 2024 when he was discharged from employment. Curtis Anderson was Mr. Sheridan's immediate supervisor. Mr. Sheridan was discharged from employment because he sent an email on August 16, 2024 to four managers, Katie Fairbanks, Doug Hayes, Troy Beltran and Martin Sundquist. See Shane Smith testimony, Employer's Exhibit 1 and Claimant's Exhibit A. Mr. Sheridan's supervisors believed the email violated the employer's standards of conduct policy, which states as follows:

The employer's standards of conduct policy states that "You are expected to treat your co-workers, managers, supervisors, direct reports, and customers with respect and professionalism. Refrain from conduct that may damage Wells Fargo's business or reputation, negatively affect employees, or disparage customers." See Shane Smith testimony and Employer's Exhibit 2. "Unprofessional employee behavior includes but is not limited to: Behavior that creates an intimidating or offensive work environment; abusive behavior or

conduct including verbal abuse, insults, name calling, deliberate attempts to humiliate or demean another, or disrespectful interruptions, obscene language or repeated use of profanity; conduct that might otherwise be considered welcome between employees but is inappropriate in the workplace or during work-related activities.” See Shane Smith testimony and Employer’s Exhibit 2. Even though Mr. Sheridan had received some disciplinary warnings during the course of his employment, none of those warnings related to the reason Mr. Sheridan was discharged from employment. See Shane Smith testimony. Mr. Sheridan’s discharge was based solely on the August 16, 2024 email he sent to his superiors. See Shane Smith testimony.

Mr. Sheridan’s email was an attempt to express his concern and frustration about what he perceived as discriminatory behavior toward him by Mr. Anderson. See Mr. Sheridan’s testimony. Mr. Sheridan’s email stated that Curtis Anderson spent time fraternizing and gossiping about him and that he felt like the red-headed stepchild. See Employer’s Exhibit 1 and Claimant’s Exhibit A. Mr. Sheridan had first reported his concern to human resources in April 2021. See Joshua Sheridan’s testimony. During the course of his employment, Mr. Sheridan continued to report what he viewed to be discriminatory behavior to human resources. Joshua Sheridan testimony. As of August 19, 2024, Mr. Sheridan did not think his concerns were appropriately addressed by human resources, and he sent one email copying in four different superiors. Joshua Sheridan testimony. His email then went on to discuss Mr. Anderson’s personal family life and that Mr. Sheridan believed Mr. Anderson to be a closeted homosexual living a lie. See Employer’s Exhibit 1 and Claimant’s Exhibit A.

August 19, 2024 was the first time Mr. Sheridan had sent an email at work containing a discussion of the personal and private lives of his colleagues. Shane Smith testimony. The employer felt this email was egregious enough to discharge the claimant immediately, without further warning. Shane Smith testimony.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying misconduct. Benefits are allowed.

Iowa Code section 96.5(2)a and d provide:

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.

d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to

unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

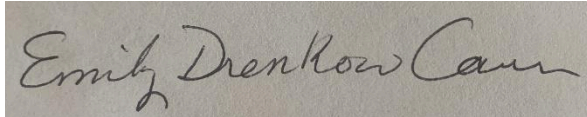
The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony regarding the reason he sent the August 19 email was credible and that this was the first email he had sent to colleagues at work containing inappropriate content of co-workers private lives.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984).

In this case, while Mr. Sheridan's August 19, 2024 email clearly contains inappropriate remarks that violated the employer's work rules, the email was an isolated incident of poor judgment that arose because Mr. Sheridan was upset by the way he perceived his supervisor had treated him and the lack of resolution he perceived he was receiving from human resources. Because the claimant had never previously been disciplined for similar conduct, the administrative law judge concludes that claimant's inappropriate remarks contained in his August 19, 2024 email was a single instance that does not evince such willful or wanton disregard of the employer's interests as is found in deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. As a result, benefits are allowed, provided the claimant is otherwise eligible

**DECISION:**

The decision of the representative dated September 12, 2024 (reference 02) is reversed. The Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. The benefits withheld based upon this separation shall be paid to claimant.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored, textured background.

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Emily Drenkow Carr  
Administrative Law Judge

October 23, 2024  
Decision Dated and Mailed

ed/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue, Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue, Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.