

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM STRUNK**  
Claimant

**APPEAL NO: 10A-UI-14491-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 08/15/10**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Wells Fargo Bank NA (employer) appealed an unemployment insurance decision dated October 13, 2010, reference 01, which held that William Strunk (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2010. The claimant participated in the hearing with Attorney Michelle Synarong. The employer participated through Debbie Mincks, Collection Supervisor and Larry Lampel, Employer Representative. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time collector from March 6, 2006 through August 9, 2010. He was discharged for poor work performance. The employer has a call model that employees must follow when talking to customers. The first item the employee must address is a demand statement. The employer testified the claimant failed to make the demand statement because he did not agree with it and did not feel it was effective. The claimant testified that he never intentionally left out the demand statement but that it was not as simple as the employer makes it sound. The employer indicated it was one sentence while the claimant testified it was numerous sentences and numerous issues that are all included in the demand statement.

The employer evaluates at least three employee calls per month and they score these calls. The monthly metrics are placed on a score card. The claimant repeatedly fell below the required standard in the monthly metrics. He was warned informally on August 16, 2008; January 19, 2009; February 10, 2009; and September 9, 2009. Formal warnings were issued on September 22, 2008; October 19, 2009; and March 12, 2010. In the final warning, he was

placed on a performance improvement plan for 90 days and required to maintain a 2.8 on his scorecard and a quality rate of at least 80 percent.

In April 2010, his scorecard was at a 3.3 and the employer said "Wow" on his evaluation. In May 2010, he was below 80 percent. The claimant improved his quality rate in June 2010 and received an award for the most improved. His performance declined again in July 2010 though but the claimant attributes that to his absences due to illness. The employer evaluated a call on July 13, 2010 and two more calls on July 23, 2010. All three calls failed to pass but the claimant was not discharged until August 9, 2010.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for poor work performance on August 9, 2010. It is not sufficient for the employer to show that it was unhappy with the way

an employee performed the job. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). The employer testified the claimant was intentionally disregarding its demand statement but the claimant testified he never intentionally failed to provide the required information. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id.

The claimant's final warning was on March 12, 2010 and he was placed on 90 days of probation. The probation expired on June 12, 2010 but no further disciplinary action was taken. The employer reviewed the claimant's work calls on July 13, 2010 and again on July 23, 2010. The calls did not pass and were not up to the required standard but the claimant was not discharged until August 9, 2010. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988). The employer has not established the claimant acted intentionally against their interests and he was not discharged for a current act. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

#### **DECISION:**

The unemployment insurance decision dated October 13, 2010, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs