IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VIKI COLLINGS
Claimant

WELLS FARGO BANK NA
Employer

APPEAL NO: 14A-UI-11626-E

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 30, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on December 8, 2014. The claimant participated in the hearing. The employer's representative, Jaclyn Fischler, called in and provided her telephone number for the hearing but did not provide the name or telephone numbers of any witnesses. Ms. Fischler would have been allowed to participate in the in-person hearing by telephone as she is based in New York. The employer's witnesses, however, are based in Des Moines and were required to appear in person for the hearing. When called for the hearing Ms. Fischler indicated the employer thought the hearing was to be held by telephone. The fact that the employer provided the name and telephone number of the representative but did not provide the name(s) and telephone number(s) of any of the witnesses who would be participating in the hearing on behalf of the employer suggests the employer knew the hearing was in-person. The employer did not appear for the hearing and did not participate in the hearing or request a postponement of the hearing prior to as required by the hearing notice.

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 loan adjuster for Wells Fargo Bank from December 3, 2003 to October 14, 2014. She was discharged for admitting she made phone calls she did not actually make October 5, 2014.

The claimant's department processed short-sales on home sales where the employer's customers are experiencing extreme financial difficulties and can no longer afford their mortgage payments. The customer wants to sell their house instead of going through foreclosure but because of the real estate market, many homes are not worth what is owed on

them. The claimant's role was to get financial information from real estate personnel and submit that information to underwriters in order for the customer to be approved for the short sale and prevent foreclosure.

In April 2014 the employer announced it was eliminating the phone team whose job was to answer the phones. As phone team employees left for other positions, which was a routine occurrence, the employer did not replace them; instead the loan adjusters were expected to answer the incoming phone calls regarding short sales but they did not receive the three weeks of intensive training the phone team was given. Initially, employees on the claimant's team were required to answer phones one hour per day and the employer allowed five hours of overtime per week so employees could still meet their goals and maintain their eligibility for bonuses which, for the claimant, usually were $800.00 per month. At first, after the phone team was eliminated, the claimant worked between 40 and 45 hours per week and worked on approximately 80 loans per week. The claimant met her goals and received her bonuses and was rated at the highest number during her performance reviews. Not only was she fast but she was also accurate.

Beginning in approximately June 2014 the loan adjusters on the claimant's team were spending five hour per day on inbound calls and were still expected to meet their goal numbers. Because the team's numbers dropped they were all working a great deal of overtime, 60 to 70 hours per week, to keep up. The employer told the team it could not work more than 60 hours per week but in order to meet their goals employees were routinely working 70 hours per week. The claimant weighed leaving her job due to the amount of overtime it now required but decided to stay, believing it would get better. Instead, more loan adjusters were leaving every week and their cases were shifted to the remaining team members. The loan adjusters previously carried 80 cases at a time but with the changes that number shot up to 150 loans at a time. Most of the claimant's team members were also unhappy and felt the situation was untenable. In September 2014 the claimant decided that because she was a long-term employee, received high marks for her performance from the employer and was well-liked by her peers and supervisors she would create a short synopsis of the loan adjusters work duties and the time required, 70 hours per week, to meet their goals. The employer appeared receptive to the information provided by the claimant and stated it would notify human resources of the situation but there were no changes forthcoming as a result of the claimant's synopsis and conversation with the employer.

In September 2014 the claimant went back to her manager. She was emotional and explained other employees were having "meltdowns" due to the stress and pressure of having to answer the phone for five hours per day while still striving to meet their goals and secure their bonuses. The claimant asked her manager for suggestions of how to maintain their work flow and work that number of hours and the manager indicated she did not know what to do about it. Later that month, the claimant went to another team's manager and asked how his team was getting the work done while having to answer the phone that many hours per day without a decrease in their sales goals and he said they were not doing so. The claimant questioned him further and he said, "They're lying" and made a typing motion.

The claimant determined the other manager was correct in stating his team was not being honest about their numbers because the manager of the other team said so; when the claimant took inbound calls and saw notes from other employees on the computer, she would say to the customer, "I see (another employee) called you on (whatever date)," and the customer would often say they had not received a call; and during a meeting with all loan adjusters October 10,

2014, the employer stated it knew employees were documenting calls without making the calls and told employees not to do so because it made it appear the teams could get the work done when they could not and did not give the employer an accurate picture of what was going on. As a result the employer stated it was going to “back off” on the goals required per week.

Sunday, October 5, 2014, was the claimant’s mother’s 81st birthday and she and her family had planned a get together at a restaurant for the occasion. The claimant had not seen her grandchildren in three weeks because she was working long hours during the week and on the weekends. She had 56 calls to make up from the preceding week and had to leave at noon that Sunday to be able to meet her family for her mother’s birthday celebration. Consequently, the claimant made an admittedly bad decision and for the first time in her tenure with the employer she documented she made 56 phone calls in four hours when she actually only made a fraction of those calls. She then moved those calls to the following week and the employer discovered the situation the next week.

The employer discovered the situation because it would have been impossible for her to make that number of phone calls in that amount of time. The employer met with the claimant October 14, 2014, and terminated her employment. The claimant received one written warning during her employment, in August 2014, which involved an inbound call. The claimant had not been trained on how to handle inbound calls.

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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

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 employer eliminated the phone team and placed that additional responsibility on the loan adjusters. Instead of requiring them to answer phones one hour per day and allowing them five hours of overtime per week so they could meet their sales goals as they did immediately following the elimination of the phone team, the employer had the team answering phones five hours per day but did not decrease their goal numbers to reflect the change in their duties. As a result, the claimant, putting forth her best effort, often worked 70 hours per week, seven days per week. She went to the employer about the situation at least two times in an attempt to explain the stress she and the team were feeling because of the workload and resulting hours required to work in order to make their goals but the employer did not respond until the October 10, 2014, meeting at which time it stated it knew employees were documenting calls not made and instructed them to discontinue that practice because it prevented the employer from receiving an accurate picture of the teams' ability to perform the work assigned and meet the goals set. That meeting did not occur, however, until five days after the claimant documented making phone calls she did not make October 5, 2014, because she needed to leave at noon that Sunday to attend her mother's birthday dinner. There is no evidence the claimant ever previously made a false claim of calls made.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4).

The claimant was overworked and overwhelmed and as a result made a bad decision. Her actions were an isolated incident of a poor judgment. The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct. The employer has not met its burden of proof. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 30, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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