

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J ARNOLD
Claimant

APPEAL NO. 12A-UI-10235-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07-22-12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 15, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 20, 2012. The claimant did participate. The employer did participate through Dan Corbelli, loan administration manager, and was represented by John O’Fallon of Barnett Associates. Employer’s Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an Operation Clerk III, full-time, beginning November 6, 2006, through July 23, 2012, when he was discharged. On July 12, 2012, the claimant was witnessed entering the building and logging in at 8:30 a.m. on to the time keeping system. He then immediately left the building and went and moved his car in the parking lot. He had been warned repeatedly about engaging in that behavior, including personal conversations and e-mails detailed in Employer’s Exhibit One. He was told to start work on time and to begin working when he logged in to the timekeeping system. The employer calculated that for the month of June 2012 alone, the claimant logged in and was paid for 660 minutes of time he did not work. The claimant was given a final written warning on April 10, 2012 that put him on notice that he needed to change his behavior in order to keep his employment. He was given a prior warning on November 19, 2011. He continued to log into the timekeeping system prior to beginning working. He was discharged for engaging in behavior that he had been repeatedly told not to engage in.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that on July 12, 2012, the claimant arrived at work, went into the building, logged into the timekeeping system, then immediately left the building and went to the parking lot to move his car. He knew or should have known from the prior documented warnings that he was not to engage in such behavior. His actions amount to repeated theft of time from the employer and are sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 15, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw