

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORETTA L ELLIOTT**  
Claimant

**APPEAL NO: 11A-UI-14075-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 10/02/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Wells Fargo Bank, N.A. (employer) appealed a representative's October 18, 2011 decision (reference 01) that concluded Loretta L. Elliott (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 21, 2011. The claimant participated in the hearing and was represented by Valerie Cramer, attorney at law. Judy Berry of Barnett Associates appeared on the employer's behalf and presented testimony from three witness, Amanda Laffon, Clarissa Wing, and Stacy Glenn. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 16, 2008. She worked full time as a lead teller at the employer's Des Moines, Iowa bank. Her last day of work was September 30, 2011. The employer discharged her on that date. The reason asserted for the discharge was violation of the employer's policy against force balancing.

The employer defines force balancing as intentionally modifying or falsifying figures in order to cause it to appear that the drawer was in balance, when it was not. Because of the intentional nature of the offense, the consequence for a violation is discharge. On the evening of September 27 the claimant did a count of her drawer and ended up with a result of being \$3.70 over. She began to do a reconciliation form to accept the discrepancy but then hit "escape" from the form rather than "enter," cancelling the acceptance form. In the interim she had begun to do a reconciliation of the coin machine, which she was not able to complete because a

coworker would not cooperate, so she proceeded to close up and shut down with the intention of following up on the discrepancy the next morning.

The next morning the service manager, Laffon, did a drawer reconciliation with the claimant on the claimant's drawer. It was found that the drawer was actually \$90.50 over, although \$80.52 of that was due to the coin machine being out of balance, as the claimant had filled the coin machine twice, but had only accounted for doing so once.

When the claimant came in for work on June 30 she was sent to a conference room where she spoke on the phone with a bank investigator for about an hour and 45 minutes. The investigator repeatedly accused the claimant of lying and being dishonest and did not listen to the claimant's explanation. He asserted that she had intentionally indicated that the drawer was balanced so as to avoid being given a formal warning for variances, as the claimant had previously received informal warnings and would have been given a formal warning for an additional occurrence. He repeatedly urged the claimant that she needed to accept responsibility for her conduct. The bank location manager, Wing, was present in the conference room but did not directly participate.

The conference call broke for about ten minutes and the claimant was given a piece of paper to write her statement. She wrote a statement indicating that her balance report on which she did not accept there being any variance on September 26 "was a lie," but continued to state that "I'm sorry, but I don't want you to think I'm a thief or dishonest. I am sorry there was dishonesty involved in my balancing issue. Again I am sorry. I love my job & I am sorry. In the future, I will slow down and try to find those problems before I finish for the evening. Please forgive me!"

The investigator on the phone had the claimant turn over her statement to Wing, who read the note to the investigator. Because the claimant had put in writing that she had "lied" on her balance variance form, the employer concluded that she had intentionally changed the balance and committed a forced balancing, and that therefore she should be discharged.

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

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that the claimant had intentionally manipulated the figures to do a force balance. In determining that the claimant's error was intentional, the employer primarily relies on the claimant's written statement that her balance "was a lie." Typically, this would be sufficient to create at least a prima facie presumption of intent. However, where the claimant has presented persuasive testimony that she wrote her statement only after being constantly browbeat for an hour and 45 minutes and so wrote things she hoped would placate the investigator rather than how she truly viewed the situation, the presumption is eroded. Beyond the claimant's questionably obtained "confession," the employer has presented no other evidence that the claimant's failure to properly account for the discrepancy in her drawer on September 27 was intentional, or was more than an inadvertent error.

The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra; Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). Under the circumstances of this case, the claimant's error in balancing her drawer on the evening of September 27 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

#### **DECISION:**

The representative's October 18, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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