

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GABRIELLA R GALBREATH
124 E OLINDA AVE #2
DES MOINES IA 50315-1558

WELLS FARGO BANK
c/o TALX UCM SERVICES INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-03978-S2T
OC: 03/12/06 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed a representative's March 30, 2006 decision (reference 01) that concluded Gabriella Galbreath (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2006. The claimant participated personally. The employer participated by Paula Sullivan, Supervisor.

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 hired on September 30, 2005, as a full-time customer

service representative. The claimant requested and became a part-time employee on February 24, 2006. The claimant signed for receipt of the company handbook on October 12, 2005. The claimant also had access to online resources that gave instructions on navigations of telephone calls. The online resources indicated that the employer had a no-tolerance policy with regard to hanging up on a customer.

On March 14, 2006, the claimant was on the telephone with a customer who wanted to change his vital information. The claimant requested identifying information and the customer refused. He asked the claimant if she were black. When the claimant responded in the affirmative, the customers said "It figures." The customer proceeded to call her a dumb ass bitch, a nigger bitch and stupid. The claimant remained calm while on the line but was upset by the use of the term "nigger." The claimant told the customer she was going to release the call. She remembers telling the customer that he could call her supervisor if he had further questions.

On March 15, 2006, the employer terminated the claimant for hanging up on a customer. The claimant understood that a white female employee hung up an abusive call but was not terminated. The claimant received no warnings during her employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

Iowa Code section 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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer discharged the claimant and has the burden of proof to show misconduct. It offered one incident of failure to follow instructions to the letter of the rule. The claimant's one incident of failure to follow the employer's rules does not rise to the level of misconduct, especially when the customer's abusive behavior is taken into account. The employer did not provide sufficient evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 30, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/tjc