

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOWARD V FLATT
Claimant

APPEAL NO. 10A-UI-05052-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

OC: 01/10/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated March 23, 2010, reference 01, which held that no disqualification would be imposed regarding Howard Flatt's separation from employment. After due notice was issued, a hearing was held by telephone on May 19, 2010. Mr. Flatt participated personally. The employer participated by Julie Knutson, Loan Administration Manager, and Melinda Reese. The employer was represented by Maxine Piper of Barnett Associates.

ISSUE:

At issue in this matter is whether Mr. Flatt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Flatt was employed by Wells Fargo Bank from November 9, 2009 until January 5, 2010. He was last employed full time as a loan adjustor specialist. On January 5, he was notified that management felt his recent promotion had been premature and that he was being demoted back to set-up. Mr. Flat said "bullshit" and asked for specifics of his failures. He had not previously been notified of any problems with his work or that he was in danger of being demoted.

Mr. Flatt was meeting with his manager in a conference room and no other individuals were present at the time. In response to Mr. Flatt's use of profanity, his manager had another individual sit in on the remainder of the meeting. With both individuals present, Mr. Flatt again stated that the demotion was "bullshit" and that, if he was being moved back, the employer would have to pay unemployment as he did not intend to work with "those fuck-ups." As a result of his conduct during the meeting, Mr. Flatt was discharged on January 5.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In order to support a disqualification from job insurance benefits, the misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Mr. Flatt was discharged because he used profanity during a meeting with his manager.

The profanity was not used in a name-calling context or in the course of disobeying a directive from his supervisor. It was not used in front of others so as to undermine the supervisor's authority. The profanity represented a knee-jerk reaction to the unexpected news that he was being demoted without any indication that he was at fault in the demotion. The administrative law judge is inclined to view this single "hot-headed" incident as a minor peccadillo and not deliberate misconduct as that term is defined by law. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated March 23, 2010, reference 01, is hereby affirmed. Mr. Flatt was discharged by Wells Fargo Bank but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs