

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J HALAS
Claimant

APPEAL NO. 08A-UI-09113-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/27/08 R: 02
Claimant: Respondent (1)

Section 96.592)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated October 1, 2008, reference 01. The decision allowed benefits to the claimant, Brian Halas. After due notice was issued a hearing was held by telephone conference call on October 23, 2008. The claimant participated on his own behalf. The employer participated by Manager Sandra Knode.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Brian Halas was employed by Wells Fargo from September 30, 2002 until July 28, 2008 as a full-time loan servicing specialist. He requested, and was granted, short term disability from May 8 until June 29, 2008. The leave management team (LMT) kept him apprised of the status of his leave and on July 11, 2008, sent him a letter stating the leave would not be extended unless his doctor sent medical certification of the need for an extension.

Mr. Halas took the letter immediately to his doctor and was assured the information would be sent. He confirmed later with the doctor that the necessary certification had been returned to the LMT. However, the information was not received by the LMT and the next notification the claimant received was a letter of discharge on July 29, 2008. The employer considered him a no-call/no-show since June 29, 2008, because it did not believe his short term disability had been extended.

REASONING AND CONCLUSIONS OF LAW:

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 claimant appears to have made a diligent and good faith effort to comply with the requests of the LMT to extend his leave past June 29, 2008. He had confirmed the necessary information had been sent by his doctor, and all attempts to contact the LMT and the insurance company administering the benefits were unsuccessful.

The employer has failed to adequately rebut the claimant's testimony that the documentation was sent as required. Without more specific testimony and evidence, the administrative law judge concludes the employer has not met its burden of proof to establish the claimant was discharged for misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of October 1, 2008, reference 01, is affirmed. Brian Halas is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs