

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM L FLETCHALL
Claimant

APPEAL NO. 11A-UI-13381-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC:09/11/11
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated September 30, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 3, 2011. Claimant participated. Employer participated by Nicole Cazares, Collection Manager, and Thu Nguyen, Supervisor. The employer was represented by Pamela Bailey. The record consists of the testimony of Nicole Cazares; the testimony of Thu Nguyen; and the testimony of Adam Fletchall.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer's collection department, which is located in Des Moines, Iowa. The claimant was hired on January 4, 2010, as a collector. He was a full-time employee. His last day of work was September 14, 2011. He was terminated on September 14, 2011.

The claimant was terminated for what the employer deems "call avoidance." The claimant was required to answer the phone when a customer called requesting information on the customer's mortgage. The employer has a fundamental policy that all calls are to be answered and that no other duty supersedes answering the telephone when a customer calls. This policy is part of the employer's code of conduct. The claimant knew that call avoidance was prohibited by the employer.

The claimant's supervisor, Thu Nguyen, did random audits of collectors. All phone calls are recorded. Ms. Nguyen discovered calls that were avoided calls by the claimant. She counseled the claimant on July 31, 2011, and August 28, 2011, that call avoidance was prohibited by the employer. Another random audit was done in September 2011. The only days sampled were September 6, 2011; September 7, 2011; and September 11, 2011. The

claimant had 21 avoided calls. The claimant was called into a meeting on September 13, 2011, to listen to the calls. He admitted that he had engaged in call avoidance on September 11, 2011. The claimant was then terminated on September 14, 2011.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The greater weight of the credible evidence in this case shows that the claimant deliberately violated the employer's policy on call avoidance. The claimant knew that the most important

part of his job was to answer the telephone and respond to customers. The prohibition against call avoidance was in the employer's code of ethics. The claimant was counseled about call avoidance on July 28, 2011, and August 31, 2011. His testimony that his supervisor never talked to him personally about call avoidance is not credible. The claimant persisted in avoiding calls. He admitted that he had done it on September 11, 2011. The administrative law judge concludes that the claimant deliberately failed to follow the reasonable instructions of his employer. This is insubordination, which is misconduct. A deliberate violation of the employer's code of conduct is also misconduct. Benefits are denied.

DECISION:

The decision of the representative dated September 30, 2011, reference 01, is affirmed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css