

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILLIAN FINK
Claimant

APPEAL NO. 14A-UI-04765-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 04/13/14
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Jillian Fink filed a timely appeal from the May 1, 2014, reference 01, decision that disqualified her for benefits based on an agency conclusion that she had been discharged for violation of a known company rule. After due notice was issued, a hearing was held on May 28, 2014. Ms. Fink participated. The employer did not provide a telephone number for the hearing in response to the hearing notice and did not participate. After the hearing record was closed, the administrative law judge received written notice from the employer that the employer was waiving its participation in the appeal hearing. The Appeals Section had received the written notice on May 27, 2014 toward the end of the business day. Exhibit A was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jillian Fink was employed by Wells Fargo Bank NA from 2011 until April 8, 2014, when the employer discharged her for an alleged violation of a company policy. From January 2012 until the end of the employment, Ms. Fink was Branch Manager of the employer's Grinnell branch. The company rule allegedly violated concerned a requirement that tellers interview customers desiring to open a checking account to substantiate the customer's need for that service before the teller "tracked" the customer for the purpose of earning a bonus based on the opening of the checking account. Ms. Fink had not worked as a teller for the employer and was unaware of the particular rule in question. Throughout the employment, prior to the rule violation alleged at the end of the employment, the employer had consistently commended Ms. Fink for her work for the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer waived its participation in the appeal hearing and did not present any evidence to support the allegation that Ms. Fink was discharged for misconduct in connection with the employment. The evidence in the record establishes no intentional deviation from the employer's policies, no negligence and no carelessness on the part of Ms. Fink. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Fink was discharged for no disqualifying reason. Accordingly, Ms. Fink is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's May 1, 2014, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs