

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDAN J THOMPSON
Claimant

APPEAL NO. 10A-UI-06148-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**Original Claim: 03/21/10
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 13, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 7, 2010. Claimant participated. Employer participated by Bridget Finnegan, loan administration manager, and Theresa Menough, loan administration manager. The employer was represented by Steve Zaks. The record consists of the testimony of Bridget Finnegan; the testimony of Theresa Menough; the testimony of Brandan Thompson; and Employer's Exhibits 1 through 5.

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 as a loan servicing specialist at the employer's mortgage center located in West Des Moines, Iowa. The claimant was responsible for taking inbound calls from customers concerning loan modification. The claimant had been employed since February 13, 2006. Her last day of work was March 23, 2010. She was terminated on March 23, 2010.

The incident that led to the claimant's termination occurred on March 23, 2010. The claimant took a call from a customer who asked to speak with a supervisor. The claimant told the customer that her supervisor was on vacation. The customer then asked to speak with a member of management above the level of supervisor. The claimant gave the customer the name of Theresa Menough. Ms. Menough was at her desk, but the claimant did not see her. She put the customer on hold and went to look for a supervisor. After approximately four minutes on hold, the customer hung up the phone.

Ms. Menough was at her desk and had heard the claimant talking with the customer. She was expecting a transferred call. When she did not receive the call, she reviewed the recording of

the claimant's call with the customer. Ms. Menough and Ms. Finnegan, who was the claimant's acting supervisor, both listened to the call and determined that the claimant had been dishonest with the customer by saying Ms. Menough was not in the office. Ms. Menough and Ms. Finnegan did not believe that the claimant had properly serviced this customer. She was then terminated for her handling of this customer call.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to establish misconduct. The claimant was terminated over the way she handled a customer call. The employer felt that the claimant was dishonest when she told a customer that Ms. Menough was not in the office when Ms. Menough was in fact in the office. The claimant testified that she did not see Ms. Menough when she was initially talking with the customer and that the customer was on hold while she was looking for another supervisor. The claimant thought she was supposed to avoid transferring calls to management and seek to solve the problem on her own. Although the claimant's statement to

the customer that Ms. Menough was not in the office was not accurate, there is no evidence that she deliberately lied to the customer. The claimant was terminated for what was essentially a performance issue. Errors of judgment or discretion in isolated instances are not disqualifying misconduct. Accordingly, benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 13, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw