

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL R HARMSSEN

Claimant

APPEAL NO. 06A-UI-11285-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 10/22/06 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated November 17, 2006, reference 01. The decision allowed benefits to the claimant, Jill Harmsen. After due notice was issued, a hearing was held by telephone conference call on December 18, 2006. The claimant participated on her own behalf. The employer participated by Manager Penny Tebben.

ISSUE:

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

FINDINGS OF FACT:

Jill Harmsen was employed by Wells Fargo from November 26, 2001 until October 26, 2006. She was a full-time supervisor.

On October 10, 2006, Manager Penny Tebben had received an e-mail regarding the hiring of two temporary employees. The e-mail contained information such as dates of birth, social security numbers, the rate of pay to the workers as well as the rate of pay to the temporary agency. Ms. Tebben forwarded this to Ms. Harmsen. In her turn the claimant forwarded it to the team members under her supervision. She had intended only to inform them of the hiring of the temporary workers.

One team member received the e-mail and immediately informed her she had forwarded confidential information. The claimant then recalled all the other e-mails before they could be opened by the rest of the team.

Two weeks later the team member who had received the e-mail notified Ms. Tebben of the incident. She contacted the corporate human resources who instructed her to discharge the claimant. Ms. Harmsen did acknowledge the incident and provided proof of at least one of the recalled e-mails.

The employer maintained that discharge occurs for any violation of ethics or the security code at Wells Fargo. However, Ms. Tebben acknowledged that a team member of Ms. Harmsen's had accidentally revealed information about one customer to another customer and only received a final written warning at her instruction.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has only provided evidence of one incident which occurred over two weeks prior to the discharge. Nothing is known about why the team member waited two weeks before revealing the information about the e-mail to the manager. The employer has also failed to adequately explain the disparity of treatment between employees who revealed confidential information.

It is undisputed that confidential inform was forwarded by Ms. Harmsen, but it is noted that the confidential information was forwarded to her as well, and no explanation provided as to why she would need to have all of this information about dates of birth, social security numbers and rates of pay.

The record establishes the claimant was discharged for a one-time error in judgment and was disciplined by discharge when others who also violated confidentiality were not. This disparate

treatment is suspect and as such the administrative law judge considers the employer has failed to meet its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of November 17, 2006, reference 01, is affirmed. Jill Harmsen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css