

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WELLS FARGO BANK
C/O TALX EMPLOYER SERVICES
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Appeal Number: 05A-UI-06264-H2T
OC: 05-15-05 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 3, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 1, 2005. The claimant did participate. The employer did participate through Jean Hall, Store Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a personal banker full time beginning May 1, 2002 through May 17,

2005 when she was discharged. Prior to her discharge on May 17, the claimant had last been warned about unprofessional conduct in the workplace on May 2, 2005. At that time her direct Supervisor, Jean Hall warned her that any other incidents of unprofessional conduct could result in her termination. The claimant had previously been warned or disciplined for using profanity in the workplace, speaking ill of older customers, talking too loudly about personal matters and disturbing the customers as well as improperly filling out her time card.

On Saturday May 14, 2005 the claimant was scheduled to work from 9:00 a.m. until 1:00 p.m. Her sixteen-year-old twin daughters arrived at work at approximately 11:30 a.m. Sixteen-year-old children are old enough to stay by themselves and do not need babysitters. When the girls arrived at the bank, they approached the teller line where tellers Bridget, Vernita and Teiala were working. One of the girls specifically asked Vernita, "are you the one my mother doesn't like?" Teiala Long overheard the comment and told the daughter, "No, that would be me." At hearing the claimant admitted that one of her daughters had made the comment. When the claimant's daughter made the comment the claimant did not do anything to control her daughters in her workplace. The daughters wandered all over the bank from the time they arrived until they left with their mother at 1:40 p.m. At one point the two girls sat in another employee's desk lying back in her chair with their feet up on her desk in full view of customers in the bank. The claimant could have asked the daughters to stay outside, it was May and the weather was not a health hazard or she could have asked her daughters to leave. The claimant admits it was poor judgment for her to have her daughters at the bank while she was working and it was a violation of company policy. The other tellers who were working that day complained about the girl's behavior while they were in the bank and Ms. Hall investigated.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by allowing her sixteen-year-old daughters to come to work with her and disrupt and disturb her coworkers. Sixteen-year-old girls are clearly old enough to be left alone without a babysitter. The claimant's choice to bring them into the workplace, then not to supervise their behavior as they quizzed her coworkers, about which ones she did or did not like, is unprofessional. In light of the claimant's repeated warnings, including as recently as two weeks prior to the incident, for unprofessional conduct, the final incident is misconduct sufficient to disqualify her from receiving unemployment insurance benefits. The claimant's disregard of the employer's rights and interests is misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 3, 2005, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1978.00.

tkh/pjs