

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA C GOLDSBERRY
Claimant

APPEAL NO. 07A-UI-07034-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 06/24/07 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated July 12, 2007, reference 01. The decision allowed benefits to the claimant, Joshua Goldsberry. After due notice was issued, a hearing was held by telephone conference call on August 6, 2007. The claimant participated on his own behalf. The employer participated by Production Supervisor Joe Pirtle and Production Manager David Calderon. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Joshua Goldsberry was employed by Wells Fargo from January 16, 2006 until June 22, 2007, as a full-time loan document specialist working 7:00 a.m. until 3:30 p.m. On June 22, 2007, Production Supervisor Joe Pirtle sent an e-mail to his staff notifying them that all employees who were not regularly scheduled to work past 5:00 p.m. would be required to work one day at the end of June from 9:30 a.m. until 6:00 p.m. because of business needs.

Mr. Goldsberry e-mailed back to say he would not be working that schedule because he had other commitments. Mr. Pirtle e-mailed back to say he was needed to work and the job took priority. The claimant replied that the job did not take priority over his family at which time the production supervisor had him come into the office for a face to face meeting.

The claimant and his family were starting a daycare business and the building required a lot of construction work to be done on it and he was committed to doing that work. The employer said the job would have to take priority and Mr. Goldsberry became very incensed. He considered the family business to be the same as family and that family had to come first. When he returned to his desk he sent an e-mail to a co-worker in which he explained the confrontation with Mr. Pirtle and stated, "He is lucky I didn't lay him out."

The employer monitors phone calls and e-mails of its employees on a daily basis. Mr. Pirtle discovered the e-mail and conferred with Production Manager Dave Calderon who told him to discuss the matter with human resources. The human resources department found this to be a violation of the violence-free workplace policy, which the claimant had received, and the decision was made to discharge. The claimant was informed of the discharge the same day.

Joshua Goldsberry has received unemployment benefits since filing a claim with an effective date of June 24, 2007.

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 claimant acknowledges he made a threat against his supervisor by saying it was lucky he had not "laid him out." This is a violation of a known company rule. In addition, The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 12, 2007, reference 01, is reversed. Joshua Goldsberry is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,440.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css