

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY A ROWLET
Claimant

APPEAL NO. 08A-UI-05523-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 05/11/08 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 June 5, 2008, reference 01. The decision allowed benefits to the claimant, Gary Rowlett. After due notice was issued, a hearing was held by telephone conference call on June 30, 2008. The claimant participated on his own behalf. The employer participated by Manager of Customer Service Mark Grittmann and Supervisor of Customer Service Diana Lindsey.

ISSUE:

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

FINDINGS OF FACT:

Gary Rowlet was employed by Wells Fargo from November 15, 2005 until May 13, 2008, as a full-time customer service representative (CSR) taking incoming calls. These incoming calls may be handled by the CSR or transferred to another department. The transfers may be direct or through a “cross sell window,” which means the CSR has transferred the call after recommending product to the customer and with the “cross sell window” getting extra points, which result in monetary awards and better performance evaluations.

In addition, the CSR may offer product to the customer, but certain guidelines have to be met. Before offering homeowners insurance, the customer must first mention insurance or escrow and then the CSR may offer insurance, but not without that basic guideline being met. Failure to meet these compliance standards could result in legal and fiscal punitive action against the employer.

Employees are given periodic training and also required to consult the changes in policy and procedure, which are made available to them on-line. The claimant acknowledged he did not check and study these as often as he should.

The quality control department, as well as supervisors, lead workers, managers and others, randomly review calls from all of the CSRs on a regular basis. Any irregularities are forwarded to supervisors. Customer Service Supervisor Diana Lindsey received referrals from the quality control department and one lead person regarding the calls the claimant received on April 11, 15, and May 1, 2008. In two calls he had offered homeowners insurance without the customer first mentioning it, and on another he had transferred a customer to the refinancing through the "cross sell window" rather than directly, even though he had not met the criteria to use the cross sell window.

Ms. Lindsey met with Mr. Rowlett and first asked him how he would handle various calls and he acknowledged he knew the proper procedures. He was then asked to listen to the recordings and could provide no explanation for failing to follow the required procedures. Ms. Lindsey notified him the matter would be reviewed by herself, her manager, and others, and further disciplinary action might result.

The recordings were reviewed again by Ms. Lindsey and Manager of Customer Service Mark Grittmann, and then the corporate human resources department was consulted. The decision was made to discharge the claimant for failing to follow required procedures, protocols, and compliance requirements. He had been warned about following the required procedures in the past and was discharged on May 13, 2008.

Gary Rowlett has received unemployment benefits since filing a claim with an effective date of May 11, 2008.

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 had been trained on how to conduct his job duties, how and under what circumstances to refer calls, and what guidelines had to be met before certain products could be offered. Updated information was available to him, but he did not always study the changes as required. Even though he had been warned about the critical importance of following these guidelines, and received additional training, he did not follow them. He jeopardized the employer by exposing it to financial and legal liabilities for non-compliance and also inflated his performance numbers by using the cross sell window when he had no basis for doing 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 June 5, 2008, reference 01, is reversed. Gary Rowlet 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 \$1,735.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw