

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

CATHERINE H WIESE  
32166 – 100<sup>TH</sup> ST  
SPRAGUEVILLE IA 52074

APAC CUSTOMER SERVICES INC  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05738-RT  
OC: 05/01/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, APAC Customer Services, Inc., filed a timely appeal from an unemployment insurance decision dated May 19, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Catherine H. Wiese. After due notice was issued, a telephone hearing was held on June 20, 2005, with the claimant participating. Rose Walton, Administrative Assistant, and Sabrina Hurley, Quality Assurance Specialist, participated in the hearing for the employer. This appeal was consolidated with appeal number 05A-UI-06202-RT for the

purposes of the hearing with the consent of the parties because both appeals dealt with the same parties, separation, issues, and facts. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses, and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time telephone sales representative (TSR) from June 4, 2000, until she was discharged on May 5, 2005. On or about June 4, 2001, the claimant was transferred to the employer's Dubuque, Iowa location, where she worked until she was discharged. The claimant was discharged for falsification of a sale. On May 3, 2005, the claimant called a customer but the customer was not there and the claimant reached the customer's answering machine. As soon as the answering machine went off, the claimant, nevertheless, verified a sale with the customer without ever having spoken to the customer or without having obtained the customer's approval. The claimant then entered the sale into her computer. The claimant knew that she had not talked to a customer and knew that verifying and entering a sale in the computer was wrong, but, nevertheless, did it anyway. She had no explanation as to why she did so. It is not possible to do this either carelessly or negligently, or unintentionally, because, to enter a sale appropriately, one must talk to a customer, and the claimant never talked to a customer and the claimant concedes she did not talk to a customer. When confronted about this matter, the claimant stated that she was sorry, asked for another chance, and indicated she would never do it again. The employer recorded the claimant's call to the answering machine and the claimant's verification of sale. No voice but the claimant's is heard. The claimant had not done this before and she had never received any related warnings or disciplines.

Pursuant to her claim for unemployment insurance benefits filed effective May 1, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,818.00 as follows: \$303.00 per week for six weeks from benefit week ending May 14, 2005 to benefit week ending June 18, 2005. For benefit week ending May 7, 2005, the claimant had earnings sufficient to cancel benefits for that week.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on May 5, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that on May 3, 2005, the claimant made a fraudulent sale to a customer. At that time, the claimant called a customer but no one answered and the customer's voice mail came on. As soon as the voice mail stopped, the claimant verified a sale, but without a customer on the other end of the line. The claimant then entered the sale in the records. The claimant must verify a sale with the customer, and the claimant was fully aware of this and, further, was fully aware that she did not verify such a sale and, in fact, had no customer on the line. The claimant was aware that what she was doing was wrong. The claimant had no explanation as to why she did so. Under these circumstances, the administrative law judge is constrained to conclude that the claimant's act was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has a right to expect of employees and is disqualifying misconduct. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,818.00 since separating from the employer herein on or about May 5, 2005, and filing for such benefits effective May 1, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 19, 2005, reference 01, is reversed. The claimant, Catherine H. Wiese, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,818.00.

kjw/pjs