

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACEY J MCCORMICK
Claimant

APPEAL NO. 10A-UI-04788-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 02/21/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Wells Fargo Bank filed a timely appeal from a representative's decision dated March 18, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits based upon her separation from Wells Fargo Bank NA. After due notice, a telephone hearing was conducted on May 11, 2010. Claimant participated personally. The employer participated by Ms. Mary Otu, Hearing Representative, and witness, Amy Garmagin, Assistant Vice President.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Tracey McCormick was employed by Wells Fargo Bank NA for approximately nine years before being discharged on February 26, 2010 by violating the bank's code of ethics policy by attempting to influence an employee to handle a transaction or process in a manner that results in a personal benefit for themselves, friends or relatives. Ms. McCormick held the position of Loan Administrative Manager I and was paid by salary.

A team member had been approached by the claimant indicating that she had a friend's distressed mortgage information and Ms. McCormick inquired as to what the individual needed to do to work out an option on the loan. The other employee, Brandy Ritchie, responded with some information to Ms. McCormick. Ms. McCormick then asked if that information was sent if Ms. Ritchie would enter it. Ms. Ritchie agreed to do so providing that it was authorized through Ms. Garmagin, the company's Assistant Vice President. Subsequently Ms. McCormick provided Ms. Ritchie with the information and Ms. Ritchie indicated some missing items. In a response to an inquiry, Ms. McCormick indicated that the entries were being provided for a "friend." When Ms. McCormick indicated that she would be contacting the borrower, Ms. Ritchie again asked if the process had been authorized by Ms. Garmagin. Based upon the nature of the request being

made by Ms. McCormick, the other employee felt the company policies were being violated and the lack of approval by Ms. Garmagin caused Ms. Ritchie to report the matter to company management. (See Exhibit Two).

The matter was investigated and Ms. McCormick was interviewed. In her statement in response to the interview, Ms. McCormick stated that when she realized that the loan had been made to a person that she knew that the requests for working out a special option on the loan that was going into default should have been put "through normal channels."

After reviewing the matter the employer concluded that the claimant's attempts to facilitate the pre-approval for the homeowner who the claimant knew for a special accommodation on the defaulting loan constituted a violation of the code of ethics policy that the claimant was aware of and was required to comply with. A decision was, therefore, made to terminate Ms. McCormick from her employment.

It is the claimant's position she did not initially know that one of the individuals involved in the loan was known to her but that information came to her subsequently. It is claimant's further position that she did not make an admission of guilt in the interview but only stated rhetorically what she should have done had she known all the factors.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It 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.

The evidence in the record establishes that Ms. McCormick was aware of Wells Fargo Bank NA's code of ethics policy and the requirement that all employees adhere to it. The evidence in the record establishes that the manner in which the claimant went to another employee to input information and to facilitate pre-approval for the person that the claimant knew was a violation of the ethics policy. The claimant's statements to the other employee as to why she had not received specific authorization from the bank's vice-president, Ms. Garmagin also verified the employer's perception that Ms. McCormick was acting intentionally in violation of the policy.

Based upon the evidence in the record and the application of the law, the administrative law judge concludes that the claimant's conduct was a willful disregard of her employer's interests and reasonable standards that they had a right to expect of their employees under the provisions of the Iowa Employment Security Law. Benefits are denied.

The claimant has received unemployment insurance benefits to which she is not entitled.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 18, 2010, reference 01, is reversed. Tracey McCormick is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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