

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

JOSEPH W POWELL
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WELLS FARGO BANK
C/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-07788-AT
OC: 06-19-05 R: 02
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 for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wells Fargo Bank filed a timely appeal from an unemployment insurance decision dated July 20, 2005, reference 02, which allowed benefits to Joseph W. Powell. After due notice was issued, a telephone hearing was held August 15, 2005 with Mr. Powell participating. Production Manager Matt Frickenstein participated for the employer.

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: Joseph W. Powell was employed as a mortgage

loan specialist by Wells Fargo Bank from October 27, 2003 until he was discharged on June 22, 2005. His actual duties were that of an assistant underwriter. On June 21, 2005, Production Manager Matt Frickenstein conducted a random audit of Mr. Powell's work over the past two months as a result of an earlier performance improvement directive. In his review Mr. Frickenstein found four instances in which Mr. Powell had without authorization changed loan amounts or loan types (interest only, conventional, ARM) without first consulting the supervising underwriter. This was contrary to company policy and had been the subject of verbal warnings in July of 2004 and May of 2005. At the time of the discharge, Mr. Powell asserted that the lead underwriter had approved this practice so long as it did not change the outcome of the loan. This assertion was not corroborated when Mr. Frickenstein conferred with the lead underwriter.

Mr. Powell has received unemployment insurance benefits in the gross amount of \$1,139.00 since filing a claim effective June 19, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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).

Mr. Powell testified that the lead underwriter had first authorized the practice in early 2004, prior to a new system being instituted by the company and prior to both of the warnings he received. His testimony that the lead underwriter also reaffirmed the practice after the warnings is implausible, in particular in light of Mr. Frickenstein's contrary information from the lead underwriter. The administrative law judge concludes that Mr. Powell violated known company procedures and was discharged for continuing to violate the procedures after two prior warnings. Benefits are withheld.

Mr. Powell has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated July 20, 2005, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$1,139.00.

tjc/kjw