

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

KELLY T PHAM
3313 VILLAGE RUN DR
DES MOINES IA 50317

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

Appeal Number: 05A-UI-02547-A
OC: 01-30-05 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kelly T. Pham filed a timely appeal from an unemployment insurance decision dated March 2, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on April 7, 2005 with Ms. Pham participating. Michael Wahlstrom and Delores Lankford participated in the hearing for the employer, Wells Fargo Bank. Exhibits 1 through 5 were admitted into evidence.

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: Kelly T. Pham was employed by Wells Fargo Bank from October 16, 2000 until she was discharged on February 3, 2005. She last worked as a customer service representative. Company policy prohibits employees from servicing their own accounts or loans. Ms. Pham violated that policy on February 2, 2005. Without disclosing to her supervisors that she was doing so, she stopped payment on an escrow check and reissued it. The original check had been made out to Ms. Pham. She took no money to which she was not entitled. Nevertheless, she was not allowed to handle the transaction herself.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Pham was discharged for misconduct in connection with her work. 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).

Ms. Pham contended that she had told Ms. Lankford that she was reissuing a check to herself. Ms. Lankford denied that Ms. Pham had disclosed that she was self-dealing. The administrative law judge finds Ms. Lankford's testimony the more persuasive. Documentary evidence in the file establishes a clear, firm policy by the employer preventing employees from dealing with their own accounts or loans. The evidence establishes that Ms. Pham was aware of the policy and had received training on the policy. The administrative law judge finds it implausible that Ms. Lankford would participate in a subordinate's violation of that policy. The administrative law judge concludes from the evidence that Ms. Pham knowingly and deliberately violated the company policy preventing self-dealing. Misconduct has been established. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 2, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tjc/tjc