

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILEE R KROHN
Claimant

APPEAL NO. 12A-UI-02486-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

OC: 01/22/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated February 29, 2012, reference 01. The decision allowed benefits to the claimant, Emilee Krohn. After due notice was issued, a hearing was held by telephone conference call on April 11, 2012. The claimant participated on her own behalf with Jason Steck and was represented by Jenna Green. The employer participated by Loan Adjustment Supervisor Courtney Nevilles and Collections Manager Tim Mangan and was represented by Barnett Associates in the person of Frankie Patterson.

ISSUE:

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

FINDINGS OF FACT:

Emilee Krohn was employed by Wells Fargo from March 7, 2011 until January 24, 2012 as a full-time loan adjustor. She was placed on a warning for January 2012, which means she would be ineligible for bonuses during that month.

On January 17, 2012, a loan closed and a letter was to be sent out immediately informing the parties of the settlement. The claimant had intentionally delayed sending out the required paperwork because she wanted the transaction to be concluded in February, when she would be eligible for bonuses again. Loan Adjustment Supervisor Courtney Nevilles counseled her about this and said it constituted “gaming,” which was illegal and would be grounds for discharge.

Ms. Krohn asserted at the appeal hearing she had never heard the term “gaming” and was unaware of what it was. But, the entire team had been presented with the Incentive Compensation Plan, which included code of conduct. At the meeting where it was presented, the entire document was read to the team. That document included a definition of gaming. The definition is, “the manipulation and/or misrepresentation of sales, transactions, reported time,

tasks completed, and/or other related reporting in order to receive or attempt to receive compensation, or to meet or attempt to meet goals.”

The claimant told Ms. Nevilles she was having financial difficulties and needed the bonus in February. The supervisor said it was unacceptable. Shortly thereafter, the claimant called the client, which is prohibited by policy, and offered her an “extension” of the due date for the payment. The client said the money had already been wired and no extension was needed. Ms. Krohn did not note the conversation on the computer system as required, but listed the contact as a “no call.”

Ms. Nevilles was contacted about this unauthorized call on January 24, 2012, and investigated by checking Ms. Krohn’s computer records, retrieving the call and listening to it. It was evident the claimant had initiated the call, which is prohibited, and offered an extension of the payment due date, which was not authorized. She was discharged for violation of the company rules against “gaming.”

Emilee Krohn has received unemployment benefits since filing a claim with an effective date of January 22, 2012.

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 administrative law judge does not find the claimant's testimony to be credible. She denied knowing about the policies against "gaming" but was present when that definition and the prohibition against it were read aloud to the team. She stated calling the client was part of her regular job duties but it was not—she could speak with the client only if the client called her. She denied any attempt to manipulate the system but acknowledged she needed the money for a bonus in February because of her financial problems.

Ms. Krohn willfully and deliberately violated the company policies and rules twice in an attempt to manipulate her receipt of a bonus. This is strictly prohibited by the policy and she did it twice. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 29, 2012, reference 01, is reversed. Emilee Krohn is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw