

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN D MCFARLAND
Claimant

APPEAL NO. 09A-UI-06886-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

OC: 04/05/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated April 28, 2009, reference 01, which held that no disqualification would be imposed regarding Jonathan McFarland's separation from employment. After due notice was issued, a hearing was held by telephone on June 1, 2009. Mr. McFarland participated personally. The employer participated by Cory Hanson, Supervisor, and Tanner Ludwig, Team Leader.

ISSUE:

At issue in this matter is whether Mr. McFarland was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McFarland was employed by Wells Fargo Bank from February 25, 2008 until April 10, 2009 as a full-time collector. He was discharged for violating the employer's ethical standards.

Mr. McFarland was monitored by Tanner Ludwig for a period of 30 minutes on April 6. Mr. McFarland searched the computer files to locate customers whose files indicated a check had been written as payment on their account. He then entered information into the system to indicate he had spoken to the customer on that date to make payment arrangements. He then took credit for the payment already reflected in the customers' accounts. This occurred with three different customer accounts on April 6 while he was being monitored. When confronted on April 8, he acknowledged that no customers were on the line when he entered the transactions. The only reason he gave for falsifying the records was that he felt pressure to meet goals. The top collector in any given month may receive a bonus of up to \$1,000.00. The above matter was the sole reason for Mr. McFarland's April 10, 2009 discharge.

Mr. McFarland filed a claim for job insurance benefits effective April 5, 2009. He has received a total of \$1,552.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. McFarland was discharged because of dishonesty. He deliberately and intentionally manipulated the employer's records so that he would receive credit for collections he did not, in fact, secure. He acknowledged during the hearing that he knew his actions were contrary to the employer's policy. Although monetary gain may not have been his motive, his actions still could have resulted in him receiving a bonus he was not entitled to receive.

Mr. McFarland's dishonesty was clearly contrary to the standards he knew the employer expected of him. His dishonesty constituted a substantial disregard of the employer's standards and is, therefore, disqualifying misconduct. As such, benefits are denied.

Mr. McFarland has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated April 28, 2009, reference 01, is hereby reversed. Mr. McFarland was discharged for disqualifying misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. McFarland will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css