

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL A CULLOM

Claimant

APPEAL NO. 07A-UI-02456-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 02/04/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated February 28, 2007, reference 01, which held that no disqualification would be imposed regarding Gabriel Cullom's separation from employment. After due notice was issued, a hearing was held by telephone on April 11, 2007. Mr. Cullom participated personally. The employer participated by Kevin Swensen, Supervisor, Customer Management Department. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Cullom 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. Cullom was employed by Wells Fargo Bank from September 2, 2003 until February 7, 2007. He was last employed full time as a home equity sales specialist. He was discharged as a result of a practice the employer considered "gaming." The employer defines "gaming" as "manipulating or misrepresenting sales in an attempt to meet sales goals or receive commissions."

Mr. Cullom's job was to attempt to retain business the bank was at risk of losing. In an effort to retain business, he was allowed to make rate concessions, change variable rates to fixed rates, or offer new products. In December of 2006, the employer noted that Mr. Cullom's figures for "risks saved" exceed those of others performing the same job. In January, an audit was conducted on Mr. Cullom's sales for the period from December 7 through December 29. It was determined that there were 157 customers who had received multiple calls from him. The employer felt that some of the multiple calls were justified but others were not. The employer felt that some of the multiple contacts represented calls in which Mr. Cullom was simply reviewing the loan information with the customer and then counting the contact as a "risk saved." The employer was unable to state what amount, if any, Mr. Cullom received in

commissions that he should not have received. The employer did not discuss the audit findings with him until the date of discharge.

Mr. Cullom was given an informal warning on January 15, 2007 because he was receiving leads from personal bankers within the bank. The practice had been prohibited prior to January 15. He was to receive his leads from calls placed to the bank.

REASONING AND CONCLUSIONS OF LAW:

Mr. Cullom was discharged by Wells Fargo Bank. 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. Cullom was discharged for allegedly engaging in "gaming," a practice prohibited by the employer's policies. The parties disagree as to whether he was, in fact, engaging in the practice. Mr. Cullom does not dispute that he made multiple calls to customers. However, it was his contention that the calls were justified and not for the purpose of increasing his sales or receiving unearned commissions.

The type of conduct complained of by the employer was susceptible to proof in the form of bank records. The employer did not produce any documentation to establish that Mr. Cullom's repeated calls were unwarranted. The employer did not have the documentation available during the hearing. The employer sent a copy of the policy Mr. Cullom was alleged to have violated but did not send any proof of his actions. The bank records would establish, presumably, whether one party's position was more viable than the other's. Moreover, the employer failed to establish to the satisfaction of the administrative law judge that Mr. Cullom was actually paid commissions for the repeated contacts to the same customers. Inasmuch as Mr. Cullom denied the employer's allegations and inasmuch as the proof necessary to establish its contention was not offered by the employer, the administrative law judge concludes that the employer has failed to satisfy its burden of proof. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 28, 2007, reference 01, is hereby affirmed. Mr. Cullom was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw