

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

JOY M NEBEL  
2617 N 15<sup>TH</sup> PLACE  
FORT DODGE IA 50501

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

Appeal Number: 05A-UI-11265-HT  
OC: 10/09/05 R: 01  
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, 4<sup>th</sup> 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  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated October 26, 2005, reference 01. The decision allowed benefits to the claimant, Joy Nebel. After due notice was issued a hearing was held by telephone conference call on November 17, 2005. The claimant participated on her own behalf. The employer participated by District Manager Liz Delgado and Senior Investigator Whitney Giles. Exhibit One was admitted into the record.

#### 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: Joy Nebel was employed by Wells Fargo from August 25, 2003 until October 7, 2005. She was a full-time personal banker. During the course of her employment the claimant received a copy of the employee handbook which includes the code of ethics, as well as attending training sessions regarding the code at other times. One of the provisions of the code of ethics prohibits employees from a reversing or waiving fees on their own account. This must be done by another employee. Approval for the reversal or waiving of fees must be sought from the "next higher level of authority." (emphasis in original text).

Ms. Nebel had waived or reversed fees on the accounts of co-workers during the course of her employment, but she had always either checked first with her supervisor or had the supervisor ask her to do it after prior approval. However, on August 31, 2005, the claimant asked another employee, "Sally," to waive some overdraft and returned check fees from her account. Sally questioned whether she should do it but Ms. Nebel assured her it was okay. Sally did remove the charges from the claimant's account, but later asked her supervisor about it because she did not feel it was right. The supervisor told her the policy had not changed and approval needed to come from the next highest level of authority.

The supervisor did not report the matter but the internal fraud detection unit discovered the questionable transaction late in September 2005, and notified Senior Investigator Whitney Giles, who referred the matter to District Manager Liz Delgado. Ms. Delgado went to the claimant's brand bank and questioned all employees on their understanding of the code of ethics in regards to waiving fees. Everyone acknowledged an understanding of the policies. The claimant acknowledged she had not had the approval of a supervisor before asking Sally to waive the fees on her account but thought it was okay since the previous supervisor had always approved it. Ms. Delgado discharged the claimant for violation of the code of ethics on October 7, 2005.

Joy Nebel has received unemployment benefits since filing a claim with an effective date of October 9, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

The claimant maintained she thought the provisions of the code of ethics were somewhat vague as to the waiving or reversing of fees on employee bank accounts. However, the document is absolutely unequivocal when it states approval must come from the next higher level of authority. The handbook even emphasized the word "higher" in the text to draw attention to it.

Ms. Nebel's assertion that the previous supervisor had approved of changing employee accounts is undoubtedly true, but the point is that the supervisor approved the change, the employee him- or herself did not. In her case the claimant gave approval to a co-worker to waive or reverse fees on her account and this is a direct violation of the employer's policies. The policies exist to protect the employer against fraud and the claimant's actions constitute conduct not in the best interests of the employer. She is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 26, 2005, reference 01, is reversed. Joy Nebel is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,620.00.

bgh/tjc