

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER R VARVEL
Claimant

APPEAL NO. 08A-UI-07417-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/20/08 R: 02
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 August 8, 2008, reference 01. The decision allowed benefits to the claimant, Heather Varvel. After due notice was issued a hearing was held by telephone conference call on September 8, 2008. The claimant participated on her own behalf. The employer participated by Investigator Kelly Bacon and Manager Melissa Savits.

ISSUE:

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

FINDINGS OF FACT:

Heather Varvel was employed by Wells Fargo from October 15, 2007 until July 17, 2008 as a part-time customer service representative. On her first day of work she received training on the code of ethics which covers the standards of conduct required by all employees.

On June 17, 2008, Investigator Kelly Bacon received a referral from the fraud department which monitors all financial accounts for “suspect” activity. Between May 15 and 21, 2008, Ms. Varvel had deposited four checks to her Wells Fargo account from another account at Bank of the West (BOW). Payment was then stopped on all four checks. Due to various scheduling conflicts and absences by the claimant, Ms. Bacon and Ms. Varvel were not able to discuss this activity until July 14, 2008. The claimant maintained she had been told by a BOW representative to stop payment on the checks because the anticipated deposits to cover them had not been made, and stopping payment would prevent overdraft charges on that account. However, in the intervening two months the claimant did not take the cash from the BOW account and deposit it in the Wells Fargo account to cover the overdrafts she already had there.

Instead she attempted to call a number of times to the “phone bank” and try to set up an appointment with a banker to resolve the overdraft and other issues she was having with the account. There was a branch bank just next door to where she worked and at no time did she

stop there and ask to speak with a personal banker, only kept calling and waiting for someone to call her back to make the appointment.

Ms. Varvel was placed on administrative leave July 14, 2008, to allow the investigator, the human resources representative and the manager to discuss the issue. It was determined the claimant had violated the code of ethics by "depositing worthless paper," which is specifically mentioned in the code of ethics and is subject to immediate discharge. The claimant was notified by phone by Manager Melissa Savits she was fired on July 17, 2008.

Heather Varvel has received unemployment benefits since filing a claim with an effective date of July 20, 2008.

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 claimant was discharged for violating the code of ethics by stopping payment of checks she had deposited in her account to cover previous overdrafts. At the hearing she maintained for the first time the payment had been stopped on those checks because the checkbook had been lost or stolen. However, whatever the reason the payment was stopped, Ms. Varvel did not make a good-faith effort to get the money from the BOW account, in cash, and deposit it in the Wells Fargo account. Instead she let the negative balance in that account remain unresolved for two months.

It was entirely within her ability to go to a branch bank on her lunch hour, after work or on a Saturday to talk with the a personal banker to resolve the overdraft and other issues she stated she had, but instead she chose to only use the telephone and wait for someone to call her. As a part-time employee she obviously did have time within regular business hours to resolve the problem face to face instead of passively waiting for someone to call her.

In addition, she made no attempt to discuss the matter with her manager, or at least solicit help in getting in contact with the banking department or the human resources department. Her passivity resulted in the matter finally being referred to the fraud department from which the investigation resulted. As she had made no personal effort to pay the overdrafts, explain why she had stopped the checks, deposit the money in cash from the other account or anything else, the administrative law judge cannot consider this to be a simple error in judgment. The claimant left the account with a negative balance for nearly two months. This is a violation of the company policies and code of ethics and is 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 states 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 Claims Section.

DECISION:

The representative's decision of August 8, 2008, reference 01, is reversed. Heather Varvel is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to Claims Section for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css