

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

JANET L HUFF
826 – 22ND AVE SW
CEDAR RAPIDS IA 52404

WELLS FARGO BANK
C/O TALX UC EXPRESS
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-07802-DT
OC: 06/26/05 R: 03
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, 4th 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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed a representative's July 20, 2005 decision (reference 01) that concluded Janet L. Huff (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 16, 2005. The claimant received the initial hearing notice that had set the hearing time for 2:00 p.m.; she responded by calling the Appeals Section on August 4, 2005 and requesting that the hearing time be moved to 3:30 p.m., which request was granted. On August 8, 2005, the claimant sent a response indicating that she probably would not be available at the newly scheduled time for the hearing, and she submitted a written statement in lieu of her participation, which was admitted to the record during the hearing as Claimant's Exhibit A. Therefore, the claimant did

not directly participate in the hearing. Debra Pauley appeared on the employer's behalf and presented testimony from one other witness, Heidi Hill. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 25, 2002. She worked full time as a teller at the employer's Cedar Rapids, Iowa bank. Her last day of work was June 30, 2005. The employer discharged her on that date. The stated reason for the discharge was "force balancing," a serious violation of the employer's ethics policy, which provides for immediate discharge for a violation. "Force balancing" is "any intentional falsification of company records by misrepresenting numbers in the cash detail or altering the cash in the drawer to be in balance, or failure to complete the proper balancing procedures in order to avoid an out-of-balance condition."

On June 29, 2005, the claimant had made a duplicate transaction to a coin machine in the amount of \$3.14, and her drawer would have had to have some closing discrepancy. However, when the claimant closed out her drawer for the day at approximately 3:14 p.m., she completed a cash balance report indicating that her drawer was even – neither long nor short. Her drawer was locked, and she left. After the claimant left, Ms. Pauley, the service manager, and the head teller, who had both known about the discrepancy with the coin machine, pulled the claimant's drawer at approximately 5:14 p.m. and did a dual count of the drawer. The two managers came up with an overage in the drawer of \$5.06. They relocked up the drawer, and Ms. Pauley reported the matter to Ms. Hill, the branch manager.

When the claimant reported for work on June 30, 2005, Ms. Hill told the claimant they were attempting to track the coin machine discrepancy from the prior day, and asked the claimant to recount the drawer. The claimant was not informed that the two managers had recounted the drawer the prior evening. The claimant filed a new cash balance report and informed Ms. Hill that her drawer was actually \$3.14 short – the exact amount of the duplicate transaction with the coin machine. Ms. Hill then counted the drawer once more in front of the claimant, and came up with \$4.86 long. Reviewing the claimant's cash report, Ms. Hill discovered that the claimant had at least neglected to count \$8.00 in rolls of nickels that had been in the drawer. At first, she thought that would account for the discrepancy. However, she quickly realized that when the nickels were added on, there was still \$0.20 missing from the verified count from the prior evening. The claimant could not offer any explanation as to the varying counts or the disappearance of the \$0.20.

Had the claimant properly performed a check on June 29, and had the \$5.06 overage been reported at that time, the claimant might have received a reprimand for the overage, but her job would not have been in jeopardy.

The claimant established a claim for unemployment insurance benefits effective June 26, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$726.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code section 96.5-2-a.

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).

Even though the claimant's original cash balance report was incorrect, perhaps due to negligence, she subsequently compounded her error when she was given the opportunity to

correct it, and she failed to be candid with the employer. The claimant's manipulation of the drawer balance and attempt to mislead the employer shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. White v. Employment Appeal Board, 448 N.W.2d 691 (Iowa 1989). The employer discharged the claimant for reasons amounting to work-connected misconduct.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 20, 2005 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 30, 2005. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$726.00.

ld/kjw