

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH J ABRAHAM**

Claimant

**APPEAL NO. 07A-UI-04511-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 04/08/07 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Wells Fargo Bank, N.A. (employer) appealed a representative's April 24, 2007 decision (reference 01) that concluded Sarah J. Abraham (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 May 21, 2007. The claimant participated in the hearing. Liz Delgado appeared on the employer's behalf and presented testimony from one other witness, Mary Hembd. 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 May 18, 2004. She worked full time as a service manager at one of the employer's Sioux City Iowa bank branch locations. Her last day of work was April 9, 2007. The employer discharged her on that date. The stated reason for the discharge was a lack of truthfulness.

The bank branch at which the claimant worked had been subject to an internal annual audit review the last week of March. This review had necessitated that many records be pulled and provided for review. The claimant was responsible for returning these records to their proper place, but despite daily reminders from her supervisor, Ms. Delgado, the district manager, the records were still not put away as of April 3. On April 4 Ms. Delgado again asked the claimant if the materials had been put away, and the claimant indicated that she had taken care of getting the records put away. However, very few of the records had been put away as of that point. Ms. Hembd, another service manager, saw the numerous records that were still out and asked the claimant why she had told Ms. Delgado they had been put away; the claimant responded that she was just going put the records into some containers and hide them away in a vault until she could deal with them later. Ms. Hembd disagreed, indicating once the records got out of

place it would make restoring them more difficult and could lead to further audit problems. Later that evening after the claimant had gone for the day, Ms. Hembd observed some of the tellers putting away the records; upon inquiring, she learned that the claimant had delegated this task to them during the day, which was in fact within her authority.

The claimant established a claim for unemployment insurance benefits effective April 8, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,082.00.

## **REASONING AND CONCLUSIONS OF LAW:**

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 § 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 §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.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

Even though the claimant testified that she had delegated the filing duty to the tellers earlier in the day, thereby justifying her report to Ms. Delgado that the task had been done, Ms. Hembd credibly testified that the claimant had announced her plan to hide away the records subsequent to making the statement to Ms. Delgado; such a stated plan was inconsistent with the claimant’s supposed prior delegation of the filing duty to the tellers. The claimant’s statement to Ms. Hembd also demonstrates an intent to deceive. The claimant’s untruthful claim to her supervisor that the records had been put away and even more so her stated plan to hide the records away in a box in the vault rather than putting them away, as she had asserted she was doing, 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. 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 April 24, 2007 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 9, 2007. 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 \$2,082.00.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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