

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID B WYNER
Claimant

APPEAL NO. 06A-UI-10894-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 10/08/06 R: 02
Claimant: Respondent (2)**

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 November 1, 2006, reference 01. The decision allowed benefits to the claimant, David Wyner. After due notice was issued a hearing was held by telephone conference call on November 29, 2006. The claimant participated on his own behalf. The employer participated by Production Supervisor Debra Bricker.

ISSUE:

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

FINDINGS OF FACT:

David Wyner was employed by Wells Fargo from February 6 until October 10, 2006. He was a full-time servicing processing specialist. He was given training on how to perform his job duties at the time he was hired then had access to mentors and trainers at his work desk after that.

On May 15, 2006, he was given a verbal warning for the large number of errors he was making and placed on a performance improvement plan (PIP) which required someone else to check his work and sign off on it before it was submitted. On June 30, 2006, his performance for the month of May was reviewed and he received a formal warning for low productivity, high error rate, low quality, customer complaints, not being a “team player” and for using his personal cell phone and the company Internet for personal business.

On July 25, 2006, the claimant met again with his supervisor, Debra Bricker, to discuss a customer complaint about his work and asking that he be removed from any further work with that client. His productivity was still only 57 percent, or three files a day when the average was seven per day.

On August 14, 2006, he was given a six-month review, a formal warning for the same problems noted in the May 15, 2006, warning, and placed on another PIP. He was told the minimum

expectation was 95 percent productivity with less than two errors per month, and was reminded that over time would be required as needed to get the work done.

His progress was tracked two or three times a week by Ms. Bricker. Some small improvement was seen in his quality of work but he was still doing only two files per day. He kept his own records on a spread sheet, indicating the time he would receive a file and the time he submitted the file to the next level for further processing. On October 10, 2006, he met for the final time with his supervisor and he was still only doing two files per day. The information submitted by him on the spread sheet indicated only two to three hours of work per day but he could not account for what he was doing the rest of the work day even when asked. He was discharged by Ms. Bricker at that time.

David Wyner has received unemployment benefits since filing a claim with an effective date of October 8, 2006.

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.

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 had been advised his job was in jeopardy as a result of his poor work performance. The claimant had a good many excuses, mostly blaming his supervisor and co-workers for not giving him the correct answers or instructions. He did not accept responsibility for his own work or lack of progress and could not provide an adequate explanation for logging only two to three hours of work per day. The record establishes the claimant did not work to the fullest extent of his abilities, nor work for the full number of hours for which he was being paid. This is conduct not in the best interests of the employer and the claimant 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 he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 1, 2006, reference 01, is reversed. David Wyner is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$935.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs