

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

SHEILA A CHRISTENSEN  
2820 SE 5<sup>TH</sup>  
DES MOINES IA 50315

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

Appeal Number: 06A-UI-01036-HT  
OC: 12/25/05 R: 02  
Claimant: Respondent (1)

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated January 17, 2006, reference 01. The decision allowed benefits to the claimant, Sheila Christensen. After due notice was issued a hearing was held by telephone conference call on February 14, 2006. The claimant participated on her own behalf. The employer participated by Production Manager Tom Muselman.

Mr. Muselman changed his telephone number immediately prior to the hearing to a cell phone. He was advised prior to going on the record that the Appeals Section did not recommend the use of cell phones because of their unreliability, and that if he chose to continue using the cell phone, and the phone disconnected, the administrative law judge would not call him back and

would proceed with the hearing without his participation unless he contacted the Appeals Section with a new phone number or with his cell phone back in range. The cell phone disconnected and the judge continued with the hearing by taking the claimant's testimony. By the time the record was closed at 1:27 p.m. the employer's witness had not called back.

#### 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: Sheila Christensen was employed by Wells Fargo from October 21, 2002 until December 30, 2005. She was a full-time mortgage loan specialist. At the time of hire the claimant received the employer's Code of Ethics and, along with all other Wells Fargo employees, reviewed it on a yearly basis. It prohibits, in part, the falsification of work documents.

On the morning of Thursday, December 29, 2005, Team Lead Bill Walsh gave the claimant a file and told her a pre-payment disclosure document was missing and had to be signed by the borrower. She faxed and e-mailed the document to the broker so he could get the borrower's signature on the document and return it to Wells Fargo. Ms. Christensen planned to leave around noon that day and gave the file, along with others, to her "back up" Rob. She said the document should be returned later that day or the next day. Rob later returned the file to her desk before she left.

Just prior to her leaving Mr. Walsh came and asked her for the file and found the missing document inside, already signed. He asked Ms. Christensen how it could have been done already and why there were no stamps on it from being faxed. She said she did not know, that she had given it to Rob in case it came in while she was gone that afternoon.

Around 2:30 p.m. that same day Rob called her and said he was "in trouble" because he had "cut and paste" the borrower's signature on the pre-payment disclosure document, using a signature from another document in the file. Ms. Christensen intended to tell Mr. Walsh this as soon as she arrived at work the next day but was immediately called into a meeting to discuss the situation. At that time she did inform them of the call from Rob the previous day and indicated she had no knowledge of him cutting and pasting the signature before he told her about it by phone the day before.

The employer did not find her version of the events credible and discharged her for violation of the Code of Ethics and knowingly submitting a falsified documents.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the administrative law judge does not find the employer's witness to be any more or less credible than the claimant. The employer does not dispute that Rob did the actual cutting and pasting of the borrower's signature but has not presented any reliable evidence that the claimant knew about it until he told her about it later in the afternoon. Mr. Walsh did not testify directly as to the time sequence or his exact interaction with the claimant. The administrative law judge must conclude the employer has not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of January 17, 2006, reference 01, is affirmed. Sheila Christensen is qualified for benefits, provided she is otherwise eligible.

bgh/pjs