

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

SHANNETTE M WILLIAMS
345 DUNCAN ST
HARTFORD IA 50118-8773

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

Appeal Number: 06A-UI-02201-RT
OC: 01/22/06 R: 02
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 for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wells Fargo Bank, filed a timely appeal from an unemployment insurance decision dated February 13, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Shannette M. Williams. After due notice was issued, a telephone hearing was held on March 13, 2006, with the claimant participating. Teresa Preston, Bank Manager at the employer's branch in Pleasant Hill, Iowa, participated in the hearing for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer, most recently for four years as a service manager in the employer's branch in Pleasant Hill, Iowa, from December 12, 1988, until she was discharged on January 27, 2006. The claimant was discharged for a violation of the employer's code of ethics, Internal Control policies, primarily violating the Dual Control Usage policy. These policies appear at Employer's Exhibit One. The Dual Control Usage policy provides that two team members are required to perform the tasks together to gain access to an asset or valuable. A specific example is given to the bank's reserve supply of cash maintained in a dual control receptacle or vault. The policy further provides that an individual team member does not have access to protected cash or valuables. The policy further provides for discharge for violation. The claimant received a copy of this policy, signed an acknowledgement therefore, and went through the appropriate training also as shown at Employer's Exhibit One.

The employer's vault containing cash reserves at the employer's branch in Pleasant Hill, Iowa, where the claimant was employed, required two different combinations to enter the vault pursuant to the Dual Control Usage policies. For approximately three to six months the claimant had access to both combinations. This was a violation of the employer's Dual Control Usage policy and the claimant was fully aware that it was a violation and that knowing both combinations was prohibited. The claimant did not change either one or both of the combinations during that period of time so that she would not know both combinations until requested to do so when another employee was given a second combination in late December of 2005. The claimant then did not immediately change the combination. Two different teams have one combination each and one member of each team is required to open the vault and this also requires that two different individuals be present when the vault is opened. The claimant, on numerous occasions, opened the vault using both combinations but always had another person with her. The employer learned of this when another employee reported it and the employer conducted an investigation. The employer confronted the claimant and she conceded that she had had both combinations. The claimant was then discharged. The claimant had never received any relevant warnings or disciplines and there was no other reason for the claimant's discharge. The claimant received the other combination when it was given to her by a member of the other team. Pursuant to her claim for unemployment insurance benefits filed effective January 22, 2006, the claimant has received unemployment insurance benefits in the amount of \$1,468.00 as follows: \$367.00 for four weeks from benefit week ending February 4, 2006 to benefit week ending February 25, 2006. For benefit weeks ending January 28, 2006 and March 4, 2006, the claimant reported earnings sufficient to cancel benefits for those weeks.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on January 27, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The evidence establishes that from three to six months the claimant knew both combinations to the employer's vault in its bank branch in Pleasant Hill, Iowa, where the claimant was employed. This was a violation of the employer's Dual Control Usage policy in its Internal Controls as shown at Employer's Exhibit One. The claimant concedes that she knew of the policy and further knew that her knowledge of both combinations was prohibited and a violation of the policy. Nevertheless, the claimant did not change either one or both of the combinations so she would not know both. The claimant sought to justify her knowledge of the two combinations by stating that she felt she had to know them in case a team member, who had knowledge of the other combination that the claimant was not supposed to know was sick. However, the claimant conceded that she never had an occasion when all the members of the other team who had the other combination were unavailable to provide the combination. The administrative law judge understands that perhaps one or two members of a team might be absent but further understands that that is the reason for a team concept so that there is always

someone from the team present who can open the vault with a member from the other team. The claimant was a service manager for four years but only had both combinations for three to six months so for three and one-half years the claimant was not disadvantaged by having only one combination. There was some evidence that on occasion one person might learn both combinations but when this occurred, at least one of the combinations should be immediately changed so that one person would not have, or continue to have, both combinations. Apparently this occurred in late December of 2005 when a member of the claimant's team had to give a combination to the other team so that the vault could be opened but the claimant was instructed to immediately change the combination. She did not do so immediately. This further supports the conclusion that the claimant was aware that she should not be in possession of both combinations. When the claimant changed the combination she still knew both combinations.

The resolution of this matter is close but the administrative law judge is constrained to conclude that the claimant's knowledge of both combinations for between three to six months was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. What finally convinces the administrative law judge that the claimant's knowledge was disqualifying misconduct is that the claimant herself conceded that she was familiar with the Dual Control Usage policy and the employer's Internal Controls and knew that the knowledge of both combinations was prohibited but nevertheless maintained such knowledge for between three and six months. What happened here was more than an isolated instance of ordinary negligence or a good faith error in judgment or discretion. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,468.00 since separating from the employer herein on or about January 27, 2006 and filing for such benefits effective January 22, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 13, 2006, reference 01, is reversed. The claimant, Shannette M. Williams, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$1,468.00.

cs/tjc