

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON M BENNETT

Claimant

APPEAL NO. 08A-UI-02359-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 02/03/08 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 February 28, 2008, reference 01. The decision allowed benefits to the claimant, Brandon Bennett. After due notice was issued, a hearing was held by telephone conference call on March 25, 2008. The claimant participated on his own behalf. The employer participated by Supervisor Duane Lakose.

ISSUE:

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

FINDINGS OF FACT:

Brandon Bennett was employed by Wells Fargo from December 19, 2005 until February 5, 2008, as a full-time customer service representative receiving incoming calls. He received a copy of the employer's code of ethics regarding use of the company computer system and equipment. He had also been verbally warned by Supervisor Duane Lakose in November and December 2007 about accessing websites other than those belonging to Wells Fargo. Mr. Lakose advised him both times further incidents might jeopardize his job.

On February 2, 2008, the quality control monitors advised Mr. Lakose the claimant had been accessing the MySpace website on the company computer during work hours. This is a serious matter because when his computer is "busy," incoming calls would not be routed to him for processing. This was considered to be an intentional restriction of output.

Because the claimant had been warned twice before and continued to access non-work related websites, he was discharged on February 5, 2008, by Mr. Lakose. He has received unemployment benefits since filing a claim with an effective date of February 3, 2008.

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.

The claimant had been advised his job was in jeopardy as a result of his use of company computer equipment and internet to access non-work-related websites. In spite of the warnings, Mr. Bennett continued to access MySpace and other websites not related to his job duties, making himself unavailable to process incoming calls, therefore not serving the customers. 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 February 28, 2008, reference 01, is reversed. Brandon Bennett 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 \$2,008.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw