

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

KATHY K UTHE
819 ELM AVE
STORY CITY IA 50248

WELLS FARGO BANK NA
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-08950-CT
OC: 07/18/04 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, 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

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated August 11, 2004, reference 02, which held that no disqualification would be imposed regarding Kathy Uthe's separation from employment. After due notice was issued, a hearing was held by telephone on September 13, 2004. Ms. Uthe participated personally. The employer participated by Kathy Wilson, Branch Manager, and Kevin Geis, Bank President. Exhibit One was admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Uthe was employed by Wells Fargo Bank from November 8, 2000 until July 21, 2004 as a full-time personal banker. She was discharged for violation of a work rule which prohibits bankers from waiving fees for an individual who is a family member, relative or close friend.

On July 21, 2004, the employer learned that Ms. Uthe had reversed overdraft charges for Larry Berhenke, her roommate. Mr. Berhenke had asked his employer to change his direct deposit from his savings account to his checking account. Because the change was not done timely, he incurred overdraft charges on his checking account with Wells Fargo Bank. He had been assessed \$33.00 in overdraft charges, which represented only one overdraft. Ms. Uthe took steps to delete the \$33.00 charge. She had the discretion to waive overdraft charges. But for her relationship to Mr. Berhenke, her actions would not have presented a problem. The above incident was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Uthe was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Uthe was discharged because she waived an overdraft charge for her roommate. Her actions were contrary to the policy she knew or should have known of. However, the employer acknowledged that, under the facts of Mr. Berhenke's case, a waiver of overdraft fees would not have been inappropriate. The problem arose because Ms. Uthe handled the matter rather than referring it to another individual in the bank. The administrative law judge concludes that, given her length of employment, her conduct constituted no more than an isolated instance of poor judgment.

While the employer may have had good cause to discharge Ms. Uthe, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Because the conduct did not evince a willful or wanton disregard of the employer's interests and standards, no disqualification is imposed.

DECISION:

The representative's decision dated August 11, 2004, reference 02, is hereby affirmed. Ms. Uthe was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc