

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID TOFT**

Claimant

**APPEAL NO. 07A-UI-06205-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 05/27/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Wells Fargo Bank NA (employer) appealed a representative's June 11, 2007 decision (reference 01) that concluded David Toft (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Geri Young and Lia Potratz appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 1, 2005. The claimant worked as a full-time loan document specialist. When the claimant began working he received training and a copy of the employer's code of ethics. The claimant received an annual refresher course on the code of ethics. The employer's code of ethics informs employees that if they make a false ATM transaction to receive immediate cash they can be immediately discharged.

On April 28 and May 2, 2007, the claimant made ATM transactions where he wrote a check from his personal account for \$100.00. The claimant deposited these checks at an ATM and immediately received \$100.00 in cash each of these days. As a result of the May 2 transaction, the claimant's bank account was overdrawn about \$12.00 on May 3, 2007.

Young learned about the claimant's April 28 and May 2 ATM transactions on May 16, 2007. Young talked to the claimant about these transactions on May 17, 2007. During their May 17 conversation, the claimant indicated he did this sometimes right before pay day because he needed cash. Although the claimant indicated he had not understood the employer's code of ethics, the employer reminded him about the training and refresher courses he received concerning the employer's code of ethics. As a result of the claimant's ATM transactions and the dishonesty involved in the transaction, the employer was no longer able to bond him. The claimant had to be bonded for his job.

On May 17, the employer discharged the claimant because he breached the employer's code of ethics and could no longer be bonded because of the April 28 and May 2 ATM transactions.

The claimant established a claim for unemployment insurance benefits during the week of May 27, 2007. The claimant filed claims for the weeks ending June 2 through 30, 2007. The claimant received a total of \$1,563.00 in benefits for these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known he violated the employer's code of ethics with the ATM transactions he made on April 28 and May 2, 2007. The employer's code of ethics strictly forbids this type of conduct by any employee. The claimant not only violated the employer's code of ethics, he also engaged in an activity that prevented the employer from being able to bond him, which was a requirement of the claimant's job. The claimant committed work-connected misconduct. Therefore, as of May 27, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending June 2 through 30, 2007. He has been overpaid \$1,563.00 in benefits he received for these weeks.

#### **DECISION:**

The representative's June 11, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 27, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefit for the weeks ending June 2, through 30, 2007.

The claimant has been overpaid and must repay a total of \$1,563.00 in benefits he received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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