

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

SHELLY M PINEGAR
7141 NW 100TH ST
GRIMES IA 50111-8794

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

Appeal Number: 06A-UI-04389-CT
OC: 03/19/06 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 Overpayments

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated April 14, 2006, reference 01, which held that no disqualification would be imposed regarding Shelly Pinegar's separation from employment. After due notice was issued, a hearing was held by telephone on May 9, 2006. Ms. Pinegar participated personally. The employer participated by Craig Hatler, Western Iowa Branch Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Pinegar began working for Wells Fargo Bank in

December of 2001. She had been employed by the predecessor owners since 1994. She was last employed full time as a home mortgage consultant. She was discharged after she attempted to force another individual to quit.

Ruby Anderson performed services for Ms. Pinegar. In late September of 2005, Ms. Pinegar began having difficulty getting Ms. Anderson to respond to telephone calls. On the evening of September 27, Ms. Pinegar left a voice mail message on Ms. Anderson's cell phone. She indicated Ms. Anderson needed to give two weeks' notice. She also stated, "I can't handle this any longer. It's not fair," an apparent reference to Ms. Anderson's failure to return her calls. Ms. Pinegar went on to state in the message that Ms. Anderson had to go and that the matter had been discussed with the branch manager, Craig Hatler, who was in agreement. Ms. Pinegar had not spoken with Mr. Hatler on the matter and did not have management approval to request Ms. Anderson's resignation. When questioned by the employer, Ms. Pinegar indicated that the message was intended to get Ms. Anderson's attention. She was notified of her discharge on September 29, 2005.

Ms. Pinegar has received a total of \$2,359.00 in job insurance benefits since filing her claim effective March 19, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Pinegar 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Pinegar was discharged as a result of the cell phone message she left for Ms. Anderson on September 27, 2005. She intentionally tried to mislead Ms. Anderson into believing that she was going to lose her job and that she should resign. The message indicated that management was in agreement with the determination that Ms. Anderson had to leave the employment. The implication was that Ms. Anderson was about to be fired and that she should resign instead.

Ms. Pinegar's actions could have resulted in the bank losing an employee it really had no intentions of releasing. Her actions could also have resulted in the bank being liable for job insurance benefits had Ms. Anderson quit as requested by Ms. Pinegar. A finding by Workforce Development that Ms. Anderson's resignation had been requested by the employer could have resulted in an award of benefits. Ms. Pinegar had no authority to bind the employer to this extent. Her dishonesty was contrary to the standards the employer had the right to expect.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving that Ms. Pinegar was discharged for substantial misconduct. Accordingly, benefits are denied. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 14, 2006, reference 01, is hereby reversed. Ms. Pinegar was discharged for misconduct in connection with her employment. Benefits are

withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Pinegar has been overpaid \$2,359.00 in job insurance benefits.

cfc/kkf