

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDY M MILLIGAN
Claimant

APPEAL NO. 10A-UI-02726-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 01/17/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated February 10, 2010, reference 01. The decision allowed benefits to the claimant, Mindy Milligan. After due notice was issued, a hearing was held by telephone conference call on April 6, 2010. The claimant participated on her own behalf. The employer participated by Collection Supervisor Camille Sheridan, Collection Manager Andy Miller and was represented by Barnett Associates in the person of Steven Zaks.

ISSUE:

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

FINDINGS OF FACT:

Mindy Milligan was employed by Wells Fargo from August 18, 2003 until January 19, 2010 as a full-time loan adjuster. On December 31, 2009, Collection Supervisor Camille Sheridan was told by another supervisor, Melissa Taylor, that female members of her team had been seen logging each other into the phone system. There are only two female members of Ms. Sheridan's team, Diane McDonough and Ms. Milligan. Both of them were interviewed on January 4, 2010, and the claimant admitted she had been asked twice by Ms. McDonough to log her into her phone system because she was still in the parking lot and was afraid she would not be able to log in before the five minute grace period expired. Ms. Milligan attempted to log her co-worker in on one occasion but was not successful, and on the other occasion she had been on the phone and had not been able to get Ms. McDonough logged in before she got to her desk and did it herself.

Ms. Sheridan sent the results of her interview to the human resources department. On January 8, 2010, she was advised to re-interview both parties in the presence of another supervisor. This was done the same day with Collections Manager Andy Miller present. Once again Ms. Milligan admitted she had twice been asked to log in Ms. McDonough, and she had tried once unsuccessfully and had not been able to get off the phone to do it the second time.

She knew this was not allowed because logging into the phone system is a time record of hours worked. Instead of reporting Ms. McDonough to the supervisor for even requesting such a time record falsification, she attempted to abet the proposed falsification and only failed to do so because she could not get her co-worker logged on successfully.

The matter was then referred to human resources again and that representative spoke with the employee relations department. On Friday, January 15, 2010, Ms. Sheridan was notified by human resources to discharge Ms. Milligan for violation of company policy. The office was closed on Monday, January 18, 2010, and the claimant was notified on January 19, 2010.

Mindy Milligan has received unemployment benefits since filing a claim with an effective date of January 17, 2010.

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 was aware her co-worker was attempting to defraud the employer by having someone else log her into the phone/time keeping system. She also knew this was a violation of company policy. Rather than refuse to do this, or report Ms. McDonough to the supervisor, Ms. Milligan attempted to abet this fraud and only failed to do so by not being able to successfully complete the logging in for her co-worker.

The claimant's argument she was not guilty of wrongdoing because her attempt at logging in her co-worker was not successful or that she did not get around to it before the co-worker arrived to do it herself, is not convincing. Simply because her attempt was not successful does not mitigate the fact she did attempt to enter false information into the system. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 10, 2010, reference 01, is reversed. Mindy Milligan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css