

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHELLE L GRIMM
Claimant

APPEAL NO. 06A-UI-09964-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/10/06 R: 02
Claimant: Respondent (2)

Section 96.5-2(a) – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated October 3, 2006, reference 01, which held that no disqualification would be imposed regarding the claimant's separation from employment. After due notice was issued, a hearing was held by telephone on October 25, 2006, from Des Moines, Iowa. Claimant participated personally. Appearing as a witness for the employer was Janet McFarland-Middleton, Facility Manager/Vice President. Exhibits 1 through 7 were received into evidence.

ISSUES:

At issue in this matter is whether the claimant was separated from her employment for any disqualifying reason and whether the claimant was overpaid unemployment insurance benefits.

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. Grimm was employed by Wells Fargo Bank from November 15, 2003 until September 12, 2006. She was employed most recently as a personal banker/bank officer and was paid by salary. Claimant's supervisor was Janet McFarland-Middleton.

A decision was made to terminate Ms. Grimm from her employment based upon the results of an investigation that was caused by an anonymous complaint that the claimant had been opening accounts without requiring a secondary ID from the individual opening the account as required by federal law. The caller alleged that the claimant had repeatedly engaged in this activity and was receiving a recognition bonus pay for behavior that violated bank policy and federal law. Based upon the complaints, Ms. McFarland-Middleton reviewed account opening created by the claimant. At the end of August 2006 the claimant's supervisor reviewed all account applications and found four new accounts that used a DC Wells Fargo debit card that was used for secondary identification for the new accounts. The supervisor reasonably concluded that as the customers were new to the bank, they could not have possessed a bank debit card at the time that they opened their account. In addition, other anomalies were noted

regarding repetitive use by the claimant of debit cards to open accounts that had the same issue date. Based upon the results of the investigation, the employer reasonably concluded that Ms. Grimm was not following the required procedures by securing and using primary and secondary identification from individuals attempting to open new accounts, as required by bank policy and federal law. As the violation was considered to be a serious offense, a decision was made to terminate Ms. Grimm from her employment.

It is the claimant's position that she did not knowingly violate bank rules and that new bank customers had shown primary and secondary identification to her that satisfied the requirements. It's the claimant's further position that as she was never warned before being discharged, that her discharge is unjustified.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant's conduct was in willful disregard of the employer's interests and standards of behavior. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, the evidence establishes that Ms. Grimm, on repeated occasions, did not follow bank and federal law by securing and utilizing a primary and secondary identification source before opening new accounts. The evidence establishes the claimant had received training on the proper method of securing primary and secondary identification and the claimant had demonstrated the ability to adequately perform this function in the past. As a result of an anonymous caller's complaint, the bank investigated and determined that on repetitive occasions the claimant had utilized a bank debit card in the new account holder's name as secondary identification. The evidence establishes that the account holders could not have possessed a bank debit card prior to opening their account with the bank. The administrative law judge therefore concludes that the employer was reasonable in determining that the

claimant had utilized an unauthorized method of creating secondary identification in order to facilitate the opening of new accounts. While this conduct may have facilitated the opening of accounts, it violated bank policy as well as federal law. As the claimant was aware of the laws' requirements and the bank's policy, the administrative law judge must therefore conclude that the claimant's conduct was in willful disregard of the employer's interests and the standards of behavior that the employer had a reasonable right to expect of its employees under the provisions of the Iowa Employment Security Law. The claimant's discharge was therefore under disqualifying conditions.

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 been overpaid benefits in the amount of \$2,415.00 pursuant to Iowa Code section 96.3-7, as the decision allowing benefits has been reversed.

DECISION:

The representative's October 3, 2006, reference 01, decision is reversed. The claimant was discharged under disqualifying conditions and is disqualified for benefits until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid \$2,415.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw