

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

STAVROS C PRINTOPOULOS
10423 CLARK ST
CLIVE IA 50265

WELLS FARGO CARD SERVICES
C/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-12329-HT
OC: 10/24/04 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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Wells Fargo Card Services, filed an appeal from a decision dated November 10, 2004, reference 01. The decision allowed benefits to the claimant, Stavros Printopoulos. After due notice was issued a hearing was held by telephone conference call on December 15, 2004. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Collection Supervisor Shawn Foy and Supervisor Bill Spencer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Stavros Printopoulos was employed by Wells Fargo from March 25, 2002 until October 14, 2004. He was a full-time collector.

On October 11 and 12, 2004, Collection Supervisor Shawn Foy was doing a random monitoring of the claimant's phone activity. He discovered seven incidents, which occurred over a period of five days where the claimant was engaging in a personal phone call to a co-worker. However, while talking with the other employee, he was entering comments onto various account logs as though he were doing collection work on those accounts. This is a falsification of company documentation.

The account logs are subject to review by various entities, which oversee the collection processes of Wells Fargo. There are numerous state and federal regulations governing how collections may be made. Incorrect, misleading and inaccurate information in the account logs could result in fines or other sanctions against the employer.

Supervisor Bill Spencer met with the claimant on October 14, 2004, at which time Mr. Printopoulos was informed of the log entries made while he was talking with another employee. The information came from the Witness system on the computer, which not only records the phone conversation but also records what entries were being made into the computer. The claimant admitted what he had done but asked that the disciplinary action be reduced to a written warning. However, the repercussions of his actions for the employer were so serious that he was discharged.

Stavros Printopoulos has received unemployment benefits since filing a claim with an effective date of October 24, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

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).

The claimant was discharged not for making personal phone calls, but for falsifying company records. In order to cover the fact he was engaging in personal calls to a co-worker, he was inputting information into account logs, indicating he had been doing work when he had not. This is a form of theft by collecting wages for work not done.

But more seriously, the falsified information could have had serious consequences for the employer if it appeared incorrect or excessive contacts were being made to the debtors in violation of state or federal laws, or other, appropriate actions were taken when they were not. The employer could have been subject to legal action and/or fines for such falsified records. In order to be disqualified from unemployment benefits for a single incidence of misconduct, the misconduct must be a deliberate violations or disregard of standards of behavior which the employer has the right to expect of employees. Henry v. IDJS, 391 N.W.2d 731 (Iowa App. 1986). The administrative law judge concludes the claimant's conduct rises to the level of substantial, job-related misconduct and he is disqualified.

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 received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 10, 2004, reference 01, is reversed. Stavros Printopoulos is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,860.00.

bgh/smc