

**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**

**MARTHA DIAZ
PO BOX 524
MUSCATINE IA 52761**

**H J HEINZ COMPANY – MUSCATINE
c/o JON-JAY ASSOCIATES INC
PO BOX 182523
COLUMBUS OH 43218-2523**

**Appeal Number: 06A-UI-07595-CT
OC: 10/02/05 R: 04
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:

H J Heinz Company (Heinz) filed an appeal from a representative's decision dated July 19, 2006, reference 02, which held that no disqualification would be imposed regarding Martha Diaz' separation from employment. After due notice was issued, a hearing was held by telephone on August 16, 2006. Ms. Diaz participated personally. The employer participated by Ruth Crowell, Human Resources, and Shirley Neipert, Supervisor.

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. Diaz was employed by Heinz from March 8, 2000 until June 26, 2006. She was employed full time in production. She was discharged from the employment.

On June 15, 2006, Ms. Diaz was working as a gravy filler. She was to weigh a sampling of filled jars to make sure they were within acceptable weights. The jars were to be placed on a scale and the weight would be fed into the computer. The computer would indicate whether the weight was acceptable. On June 15, Ms. Diaz allowed overweight jars to be processed. She should have taken steps to alter production so that the weights would be within acceptable limits. Her failure to note the weight discrepancy resulted in a loss of approximately \$100,000.00 to the employer. On June 23, Ms. Diaz was running batches of steak sauce. There is paperwork that is to be completed which indicates, among other things, the condition of the air and glass. Ms. Diaz failed to complete necessary parts of the form. The failure to do so resulted in product being placed on "hold" until an investigation could be completed to determine if the product was usable or if it had to be destroyed.

On June 22, Ms. Diaz was given a verbal warning because she was wearing false fingernails in violation of the employer's rules. She was told she could not wear them at work even though she wore gloves while working. When she returned to work on June 26, she was still wearing the false fingernails. She was notified of her discharge the same day.

Ms. Diaz filed an additional claim for job insurance benefits effective June 25, 2006. She has received \$293.00 in job insurance benefits for each of the eight weeks ending August 19, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Diaz 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. Diaz was inattentive to her duties on June 15, resulting in a substantial financial loss to the employer. She knew she was to weigh the jars and knew that the computer would provide information as to whether the weight was acceptable. She also knew that she had to take steps if the jars were overweight. The fact that she was working with 18-ounce jars rather than 12-ounce jars would not have changed the process. On June 23, Ms. Diaz failed to perform an essential part of the record keeping required of her job. Her failure resulted in the employer having to place the product on hold. Ms. Diaz knew or should have known that her actions were contrary to the employer's standards. If she was too ill to perform her job, she should have notified the employer. She had leave time available that she could have used if she was too sick to work.

Ms. Diaz' disregard for the employer's policies and standards is evident in the fact that she wore false fingernails to work in violation of policy. She continued to wear the nails even after being verbally warned not to. The administrative law judge is not inclined to believe that she had no opportunity to have the nails removed during the four days from June 22 until June 26. The administrative law judge appreciates that Ms. Diaz wore gloves at work. However, there remained the possibility of a false fingernail coming loose and getting into product. Had this occurred, the employer might face legal liability if the nail was found by a consumer.

The administrative law judge concludes that Ms. Diaz' conduct of June 15, June 23, and June 26 are sufficient to establish a substantial disregard of the employer's interests and standards. It is concluded, therefore, that disqualifying misconduct has been established. Accordingly, benefits are denied. Ms. Diaz 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 July 19, 2006, reference 02, is hereby reversed. Ms. Diaz 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. Diaz has been overpaid \$2,344.00 in job insurance benefits.

cfc/pjs