

**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**

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**Appeal Number: 06A-UI-07967-H2T
OC: 07-09-06 R: 12
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/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 28, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 23, 2006. The claimant did not participate. The employer did participate through Bill Teopfer, COO, and Courtney Martinez, Human Resources Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a loan originator full time beginning January 18, 2006 through February 24, 2006, when he was discharged.

The claimant applied to work at the branch office in Omaha, where Trenton Collier was then the branch manager. Mr. Collier collected the claimant's employment application, w-4 information, I-9 information, two forms of identification, and had the claimant sign the associate employment agreement. Mr. Collier forwarded the collected information to the corporate office and allowed the claimant to begin working on closing loans.

On or around February 10 the corporate office received results from the claimant's background check indicating that he had a felony conviction for theft by deception in 2003. In order to comply with the Office of Comptroller and Currency guidelines, the employer does not hire or allow to continue in employment any person convicted of a felony. Additionally, the employer's corporate policy does not allow hiring of anyone convicted of a felony.

Mr. Collier was notified by the corporate office on February 10 to immediately have the claimant cease working. It's clear from later investigation records of the State of Nebraska Department of Banking records, that Mr. Collier allowed the claimant to continue working. The claimant was hiding his work under another persons name and he and Mr. Collier engaged in what the Department of Banking and Finance have called fraudulent activities in originating loan documentation paperwork.

The claimant was paid a little over \$17,882.00 dollars for the six loans he closed between January 18, 2006 and February 24, 2006.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer discharged the claimant based on a background check that revealed he had a recent prior felony theft by deception conviction. The employer is required to comply with federal and state standards in hiring employees. Because of the nature of the business they are engaged in, employees will have access to customer's private financial information. The record establishes that the claimant's background makes him unsuitable to work as a loan originator and the later findings by the State of Nebraska Department of Banking and Finance confirm the fraudulent loan operations engaged in by the claimant. The claimant's background and his fraudulent activities while an employee constitute disqualifying misconduct. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The July 28, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,440.00.

tkh/kjw