

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN ZIMMERMAN
Claimant

APPEAL NO. 08A-UI-00038-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

**OC: 11/25/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

US Bank National Association (employer) appealed a representative's December 20, 2007 decision (reference 01) that concluded Justin Zimmerman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 16, 2008. The claimant participated in the hearing. Cate Biro, a senior fraud investigator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employment discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 19, 2005. The claimant worked as a full-time credit analyst.

The employer does not allow employees to engage in check kiting. If an employee does, the employer discharges the employee.

At various times during his employment, the claimant wrote a check from his bank account and deposited it in an ATM machine so he would overdraft charges. The claimant did this sometimes right before payday. The claimant knew that by the time the check cleared the bank, he would have enough money in his account to cover the amount of the check. When the claimant did this, he gave himself an unauthorized loan before payday.

When Biro was investigating another person, she learned the claimant was engaged in check kiting. Biro discovered what the claimant had been doing on October 20, 2007. After confirming what the claimant had done, Biro talked to the claimant on November 7. At that time the claimant acknowledged what he had done, but indicated he had not realized check kiting was a federal offense or his actions amounted to check kiting.

The employer discharged the claimant on November 6 for his above actions. Prior to October 20, the claimant's job was not in jeopardy.

The claimant established a claim for benefits during the week of November 25, 2007. He filed claims for the weeks ending December 1, 2007, through January 12, 2008. He received his maximum weekly benefit amount of \$315.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Although the claimant may not have known what he was doing amounted to check kiting, he intentionally wrote checks for amounts of money he did not have in his bank account at that time and deposited the check at an ATM. The claimant's account was credited with "extra fictional" money so the claimant would not have pay overdraft fees. Even if the claimant would have enough money a day or so later because he would be paid, he did not have the money at the time he wrote the check and deposited at an ATM to be credited to his account. The claimant's conduct amounts to an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of November 25, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant has been overpaid \$2,205.00 in benefits he received for the weeks ending December 1, 2007, through January 12, 2008.

DECISION:

The representative's December 20, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 25, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The

claimant has been overpaid and must repay a total of \$2,205.00 in benefits he received for the weeks ending December 1, 2007, through January 12, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css