

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOLA M SEGOVIA**  
Claimant

**APPEAL NO. 06A-UI-09737-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST BANK**  
Employer

**OC: 09/03/06 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, West Bank, filed an appeal from a decision dated September 25, 2006, reference 01. The decision allowed benefits to the claimant, Lola Segovia. After due notice was issued a hearing was held by telephone conference call on October 18, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Vice President and Security Officer Pam Keller and was represented by Assistant Council Jill Hansen. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Lola Segovia was employed by West Bank from April 22, 2002 until August 17, 2006. She was a full-time teller. The employer began to have some suspicions about her cash handling when her daily report would show her drawer balanced, but a review of the tickets indicated she should have been either “long” or “short.”

On August 16, 2006, the bank investigated the claimant by sending a law clerk to her window with a sum of money to be deposited. A deposit slip had prepared which stated the amount of the money in the bag to be \$100.00 less than it actually contained. The slip said \$542.37 but the amount in the bag was \$642.37.

Ms. Segovia was observed and she did count the cash and use her adding machine. When she returned the deposit slip it was for \$542.37 and she said nothing about there being an extra \$100.00 in the bag. The next day the claimant was interviewed by Security Officer Pam Keller and Attorney John McKinney. At that interview she admitted in writing to taking the extra \$100.00 from the day before as well as \$300.00 from another bank client under similar circumstances. She was discharged for theft.

Lola Segovia has received unemployment benefits since filing a claim with an effective date of September 3, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

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 for theft, she took money from clients of the bank. She admitted to the theft of money and this is conduct not in the best interests of the employer. The claimant 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 she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of September 25, 2006, reference 01, is reversed. Lola Segovia is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$350.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs