

**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**

**JAMIE L MINCEY
1322 S 24TH ST APT #1
OMAHA NE 68108-3448**

**US BANK NATIONAL ASSOCIATION
C/o JON-JAY ASSOCIATES INC
A TALX COMPANY
PO BOX 182523
COLUMBUS OH 43218-2523**

**Appeal Number: 06A-UI-05969-RT
OC: 05-14-06 R: 01
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 Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, US Bank National Association, filed a timely appeal from an unemployment insurance decision dated June 2, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Jamie L. Mincey. After due notice was issued, a telephone hearing was held on June 26, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Kevin From, Former Branch Manager, at the employer's branch in Council Bluffs, Iowa, where the claimant was employed, participated in the hearing for the employer. Employer's Exhibit One was

admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time teller/vault teller for approximately two years until she was discharged on May 16, 2006. The claimant was discharged for "kiting" checks or floating funds between two accounts. Kiting is depositing funds from one account into another account and then before the depositing check is cleared, removing the funds from the account in which the funds were deposited. It is floating funds. This particular practice is strictly prohibited by the employer in its code of ethics, which is available to the claimant and other employees at all times. Every year employees are re-certified on the code of ethics. The employer has a no tolerance policy for this practice. The claimant was "kiting" checks over a few weeks from the end of April 2006 to early May 2006. The employer learned of this through their loss prevention unit. The claimant "kited" checks on multiple occasions. The employer's fraud investigator talked to the claimant and the claimant admitted to such behavior. The statement of the employer's fraud investigator, Jeff Wahl, appears at Employer's Exhibit One. The employer referred this matter to the police but the employer was not aware of any outcome yet on the charges. Both accounts involved in the claimant's check "kiting" were accounts with the employer. The claimant received no warnings or disciplines for this behavior since the employer has a zero tolerance for such behavior. Pursuant to her claim for unemployment insurance benefits filed effective May 14, 2006, the claimant has received unemployment insurance benefits in the amount of \$692.00 as follows: \$62.00 for benefit week ending May 20, 2006 (earnings \$200.00); \$210.00 per week for three weeks from benefit week ending May 27, 2006 to benefit week ending June 10, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She 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 employer's witness, Kevin From, Former Branch Manager at the employer's branch in Council Bluffs, Iowa, where the claimant was employed, credibly testified, and the administrative law judge concludes, that the claimant was discharged on May 16, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Mr. From credibly testified that the claimant was "kiting" checks or floating funds between two different accounts, which is prohibited by the employer's policies in its code of ethics. Mr. From credibly testified that the claimant did this multiple times from the end of April 2006 to early May 2006. The employer learned of this through its loss prevention unit and the employer's fraud investigator, Jeff Wahl, investigated the charges. His report appears at Employer's Exhibit One. The claimant admitted to him that she had committed the behaviors giving rise to her discharge. The claimant informed Mr. Wahl that she did not know that it was considered "kiting." However, this claim is not credible. Mr. From credibly testified that employees are re-certified every year on the employer's code of ethics which prohibits, among other things, check "kiting." This code of ethics is available to the claimant and employees are encouraged to read it each time before they are re-certified. The employer has a no tolerance policy for such behavior.

On the record here, the administrative law judge concludes that the claimant's "kiting" of checks or floating funds between two accounts were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive

unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$692.00 since separating from the employer herein on or about May 16, 2006 and filing for such benefits effective May 14, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 2, 2006, reference 01, is reversed. The claimant, Jamie L. Mincey, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$692.00.

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