

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHELSI PAYSON
Claimant

APPEAL NO: 11A-UI-11631-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC FEDERAL CREDIT UNION
Employer

**OC: 07-31-11
Claimant: Respondent (2R)**

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 August 23, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 28, 2011. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Amy Thomas, Vice President of Human Resources and Marketing and Rebecka Campbell, Human Resources Administrator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant 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 full-time senior financial services specialist for Sac Federal Credit Union from August 18, 2008 to August 3, 2011. She was discharged for violating the employer's policies regarding her personal bank account with the employer. Employees are required to maintain their personal bank accounts with the employer in good standing and are not allowed to be involved in any personal transactions involving themselves, their family members or their friends. On November 9, 2010, the claimant's mother and grandmother were in the employer's lobby and the employer reminded the claimant she could not perform any transactions for her family or boyfriend (Employer's Exhibit Three). On February 3, 2011, the employer became aware the claimant wrote checks on her personal account without sufficient funds to cover the checks. The employer set up a repayment plan for the claimant and removed her overdraft courtesy (ODC) privileges, which are extended to all members (Employer's Exhibit Three). On May 16, 2011, the claimant's account was again overdrawn and she had not yet started the repayment process on her previous overdrafts and fees from February 2011. She was using the ODC privileges even though she was aware she was not allowed to do so for six months after the February 2011 incident and then only if she had a clean banking record during

that time period and had permission from a regional vice-president (Employer's Exhibit Three). On June 28, 2011, the claimant had \$420.00 in overdraft fees and the employer offered to split her repayment plan from monthly to bi-weekly payments (Employer's Exhibit Three). After noticing irregularities in the claimant's personal banking account, as well as with what it believed was her grandmother's account, the employer conducted an employee account audit (Employer's Exhibit Four). The audit showed several transactions done in violation of the employer's policies, including performing transactions for herself and family members, overriding a \$30.00 overdraft fee, and failure to charge a fee for a transaction (Employer's Exhibit Four). The employer believed the claimant was also kiting checks. The claimant's grandmother's account was closed out with a deficit the employer had to take as a loss of \$1,000.00 July 22, 2011 (Employer's Exhibit Four). When the claimant's account was closed out and her employment terminated the employer took a loss of \$940.72 (Employer's Exhibit Four).

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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 has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant repeatedly violated the employer's policies regarding her personal account with the employer. She performed transactions for herself and her grandmother without regard to the employer's policies and as a senior staffer she was well aware of the policies and procedures regarding her own account and that of family members. Additionally, the claimant failed to secure permission before reinstating her ODC privileges and failed to repay the overdrafts and fees she incurred. Her actions not only violated the employer's policies but the trust the employer placed in her as a senior financial services specialist, a trust that is absolutely essential in a financial institution. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The August 23, 2011, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs