

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEANNE ZAUTKE**  
Claimant

**APPEAL NO: 08A-UI-00456-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INTERBAKE FOODS LLC**  
Employer

**OC: 02-18-07 R: 01**  
**Claimant: Respondent (2)**

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 January 7, 2008, reference 03, 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 January 29, 2008. The claimant participated in the hearing. Jill Gill, Assistant Human Resources Manager and Jo Hackett, Human Resources Manager, participated in the hearing on behalf of the employer.

**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 operator on the production floor for Interbake Foods from May 11, 2006 to December 5, 2007. On November 9, 2007, the claimant went to the payroll clerk and asked that her paycheck be held until she returned from vacation. On November 14, 2007, the claimant returned to the payroll office and stated she changed her mind and now wanted her check. The payroll office could not find her check so the employer issued a replacement check which the claimant cashed and the employer put a stop payment on the first check. On November 15, 2007, the original check was deposited in the claimant's account at 9:54 a.m. The claimant left for the airport at 10:00 a.m. She passed within a few blocks of the bank on her way to the airport. The employer investigated the situation with the bank and learned the claimant's account was overdrawn so when the check was deposited the bank did a special electronic transaction so her account would be in the black immediately because they believed the payroll check was good. There was no signature on the check but the teller verified the transaction would only be completed for the account holder. When the claimant returned from vacation November 26, 2007, the employer asked her how the original check got deposited in her account and the claimant said she did not know. She was the only person on that account. The claimant denies depositing the first check and believes either the bank made an error or someone stole her identity and made the deposit in her account but she chose to leave her account at the same bank.

The claimant has claimed and received unemployment insurance benefits since his 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 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 has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant maintains that her bank made an error or someone stole her identity and deposited the original check into her account, the employer's testimony regarding the situation was credible and it appears that the claimant deposited the first as well as the reissued check into her account. The claimant was overdrawn November 15, 2007, when the deposit was made, and consequently the bank did a special electronic transfer, assuming the payroll check was good and immediately credited the claimant's account removing her from overdrawn status rather than following the usual procedure when a deposit is made into an account that is not overdrawn. Although the bank did not have any video of the transaction and the check was not signed, it appears more likely than not that the claimant deposited both checks into her account. No one else had anything to gain by making the deposit and the claimant's assertion that the bank made an error or someone

stole her identity is a less persuasive argument. 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). 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 January 7, 2008, reference 03, 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 is overpaid benefits in the amount of \$1,692.00.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs