

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE M MANGLER
Claimant

APPEAL NO. 07A-UI-04610-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

**OC: 04/08/07 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lynne Mangler filed an appeal from a representative's decision dated April 25, 2007, reference 01, which denied benefits based on her separation from Seventh Avenue, Inc. After due notice was issued, a hearing was held by telephone on July 12, 2007. Ms. Mangler participated personally. The employer participated by Jason Smart, Human Resources Manager, and Tracy Meier, Assistant Benefits Manager. Exhibits One through Ten were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Mangler was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mangler was employed by Seventh Avenue, Inc. from July 17, 1988 until April 4, 2007. She was last employed full time as a forklift operator. She was discharged for misappropriating funds.

The employer has an incentive program called "Healthy Returns." Employees receive a cash payment for completing certain requirements of a health and wellness program. Ms. Mangler completed the necessary paperwork in December of 2006. She was found eligible for the payment and a check for \$250.00 was sent to her through inter-office mail on December 28, 2006. Ms. Mangler reported that she did not receive the check. When she still had not received it by January 19, 2007, the employer reissued the payment on January 25. Ms. Mangler cashed the January 25 check on January 31. She later received the check that had been sent on December 28 and deposited it to her savings account on February 12, 2007. Although she was "uncomfortable" about the second check, she did not question the employer about it. Other than her participation in the Healthy Returns program, Ms. Mangler had no reason to expect a \$250.00 payment from the employer.

On March 29, the employer's accounting department discovered that Ms. Mangler had cashed both Healthy Returns checks. As a result, she was suspended and later discharged on April 4, 2007. The above matter was the sole reason for the discharge.

Ms. Mangler's brother-in-law died and was buried on February 3, 2007. Ms. Mangler had been diagnosed with depression but continued to work.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Mangler was discharged after she cashed a \$250.00 check from the employer that she was not entitled to. She contended that her actions were not intentional as she was experiencing emotional difficulties due to her brother-in-law's death and her own depression. However, she continued to work in spite of any emotional difficulties she was experiencing.

Ms. Mangler testified that she was "uncomfortable" when she received the second check from the employer. She testified that this caused her to deposit the check into savings rather than cashing it. Her actions suggest that she knew there was at least a possibility she was not entitled to the funds. She received the second check less than two weeks after she cashed the first one. The administrative law judge is not inclined to believe that she would have forgotten receiving the first check. Although she may have questioned why he was receiving the check, she failed to ask anyone who would be able to tell her why. Given the fact that she was continuing to work, the administrative law judge concludes that Ms. Mangler's depression was not debilitating and did not prevent her from appreciating the consequences of her actions.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Ms. Mangler's conduct constituted theft as she accepted benefits she knew she was not entitled to receive. Theft is clearly contrary to the type of behavior an employer has the right to expect. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 25, 2007, reference 01, is hereby affirmed. Ms. Mangler was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to

ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css