

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

MELISSA A SHADY
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ALLSTAR STAFFING
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CLINTON IA 52732

Appeal Number: 06A-UI-04981-DWT
OC: 04/09/06 R: 04
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
Section 96.3-7- Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Allstar Staffing (employer) appealed a representative's May 8, 2006 decision (reference 03) that concluded Melissa A. Shady (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2006. The claimant participated in the hearing. Beth Fier and Jane Brown appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing firm. The claimant registered to work for the employer's clients on June 1, 2005. The employer most recently assigned the claimant to work at Evans Construction. The employer assigned the claimant to this job on November 1, 2005. The claimant worked as the receptionist, office worker, and bookkeeper for this client.

During this assignment, the claimant asked the owners of Evans Construction for two personal loans. The first loan was for \$400.00. The owner's wife loaned the claimant this money and wrote a check to the claimant from her personal checking account. The claimant agreed to pay the owner's wife \$400.00 when she received her income tax refund. The second loan was for \$300.00. The owner of Evans Construction agreed to issue a business check to the claimant for \$300.00 and the claimant simultaneously gave the owners a \$300.00 check from her personal account. The owners trusted the claimant to deposit her \$300.00 personal check into Evans Construction's business account. In the employer's bookkeeping system, the claimant recorded she had deposited her \$300.00 check into Evans Construction's account. The claimant did not provide Evans Construction with a receipt for this deposit.

As part of her job duties for Evans Construction, the claimant collected past due accounts. The claimant collected on a past due account. She recorded in the employer's bookkeeping system that she had made two cash deposits of \$90.00 she had received from this past due account. The claimant did not provide Evans Construction with the deposit receipts for these cash deposits.

Evans Construction's accountant found discrepancies in the books the claimant maintained for the employer and the bank statements for the business. The bank statements did not reflect the \$300.00 deposit or the two \$90.00 cash deposits the claimant asserted she had made.

The employer became aware of these concerns on April 5. The employer asked the claimant if she had any receipts and to obtain a copy of the \$300.00 check she asserted she had paid the owners of Evans Construction. The employer contacted Evans Construction's bank to see if the bank reflected any \$90.00 deposits on the day in question. The employer did this in case the bank credited the wrong account. The bank did not reveal any \$90.00 cash deposits for the day(s) the claimant indicated she had made the deposits.

The employer told the claimant she would not be allowed to return to work until she showed the employer she had a cancelled \$300.00 check that she had paid to the owners of Evans Construction as she asserted. The claimant did not obtain a copy of the check because she had been told it would cost her \$45.00 an hour for the bank to search its microfiche for the check. The claimant does not know if she turned over bank deposit receipts she had at her home that reflected she had made two \$90.00 cash deposits into Evans Construction's account. Since April 5, the employer has not assigned the claimant to another job.

The claimant established a claim for unemployment insurance benefits during the week of April 9, 2006. The claimant filed claims for the weeks ending April 15 through May 20, 2006. The claimant received her maximum weekly benefits of \$92.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Although the claimant asserted she deposited her personal \$300.00 check and made two \$90.00 cash deposits to Evans Construction's bank account, the claimant did not provide any documentation verifying this assertion. The claimant contended it would cost her too much money to have the bank search for her \$300.00 check she deposited. This is true, if the claimant knew the bank would not find a cancelled \$300.00 check she asserted she had deposited. The evidence indicates the claimant knew the amount of the check, who she made the check out to and she could even find the date of the check because Evans Construction issued her a check for this amount that same day. Based on these known factors, the employer's investigation indicates the cost to the claimant to obtain a copy of the cancelled check would be nothing or at most minimal to clear her name in this matter.

A preponderance of the evidence indicates the claimant did not make the "missing deposits" to Evans Construction as the claimant indicated she had documented in the business's computer records. The employer established the claimant committed work-connected misconduct. Therefore, as of April 9, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending April 15 through May 20, 2006. The claimant has been overpaid \$552.00 in benefits she received for these weeks.

DECISION:

The representative's May 8, 2006 decision (reference 03) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 9, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for

insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending April 15 through May 20, 2006. The claimant has been overpaid and must repay a total of \$552.00 in benefits she received for these weeks.

dlw/kkf