

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELLE G HAVELICK**

Claimant

**APPEAL NO. 09A-UI-05804-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAZETTE COMMUNICATIONS INC**

Employer

**OC: 03/15/09**

**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge of misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Gazette Communications, Inc. filed an appeal from a representative's decision dated April 7, 2009, reference 01, which held that no disqualification would be imposed regarding Shelle Havelick's separation from employment. After due notice was issued, a hearing was held by telephone on May 11 and July 22, 2009. Ms. Havelick participated personally. The employer participated by Julie Schmitt, Senior Customer Care Manager; Melanie Bruening, Customer Care Supervisor; and by Janie Ricklefs and Shonna Woods, Human Resources Managers. Exhibits One through Five were admitted on the employer's behalf.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Havelick was employed by Gazette Communications, Inc. from March 23, 1998 until March 11, 2009. She was employed full time as a customer service representative. She was discharged for falsifying company documents. Part of Ms. Havelick's job was to try to get former subscribers to re-subscribe. If someone she contacted subscribed within 30 days of her phone contact, she would receive incentive pay.

The employer discovered that Ms. Havelick was altering the dates of her contacts so that they would be within 30 days of the subscription renewal. The employer checked the records of calls made by Ms. Havelick but did not find records to match the dates on which she said she was in contact with the subscribers. The employer also reviewed the daily logs completed by Ms. Havelick concerning her activities. Some of the customers for whom she processed renewals were not listed on her daily activities report. For example, Ms. Havelick entered information into the computer that she had called customer 514225 on January 26 and February 13, 2009. Her daily activity report lists only contacts on December 26 and January 26.

She indicated in the computer that the customer renewed on February 27 after a February 13 contact from her.

Ms. Havelick altered the dates of her contacts so that it would appear that callers were subscribing within 30 days of her contacting them. She did this in order to receive incentive payments she would not otherwise be entitled to receive. As a result of this conduct, she was discharged on March 11, 2009. The above matter was the sole reason for the separation.

Ms. Havelick filed a claim for job insurance benefits effective March 15, 2009. She has received a total of \$4,932.00 in benefits since filing the claim.

**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. Havelick was discharged for falsifying company documents in order to receive incentive payments she would not otherwise have received. Her actions constituted theft, which is clearly contrary to the type of behavior an employer has the right to expect. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied.

Ms. Havelick has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

**DECISION:**

The representative's decision dated April 7, 2009, reference 01, is hereby reversed. Ms. Havelick was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Havelick will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs