

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MATTHEW DAVIS**

Claimant

**APPEAL NO. 14A-UI-11894-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**

Employer

**OC: 10/19/14**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

Apac Customer Services, Inc. (employer) appealed an unemployment insurance decision dated November 6, 2014, (reference 01), which held that Matthew Davis (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Turkessa Newsone, Human Resources Generalist.

**ISSUE:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time customer service representative from June 14, 2012, through October 30, 2014, when he was discharged due to falsification of records. In mid-October 2014, an audit was completed on calls going back to May 2014. The claimant's responsibility was to save or retain customers who called in and wanted to cancel their newspaper subscriptions. He received monthly bonus payments based on his "saves", which are self-reported. The claimant knew his job duties and sometimes acted as a supervisor.

The audit revealed the claimant had 18 invalid calls which were documented as 'save dialogue' but in fact were not since the customers did not continue their subscriptions. There were three calls on August 27; six calls on September 2; two calls on September 3; two calls on September 8; three calls on September 14; one call on September 15; and one call on September 16, 2014. The claimant was placed on investigative leave on October 22, 2014, and subsequently discharged.

The claimant filed a claim for unemployment insurance benefits effective October 19, 2014, and has received benefits after the separation from employment in the amount of \$1,380.00. The employer was unable to participate in the fact-finding interview due to improper notice, in that the information was sent to the corporate office instead of the employer representative.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 30, 2014, for falsification of records. The falsification occurred in August and September 2014. The termination or disciplinary suspension of employment must be based on a current act in order to be disqualifying. See 871 IAC 24.32(8). While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s).

In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988). While the employer discharged the claimant shortly after his falsification was discovered in October 2014, the employer could have learned about it at the time it occurred. Consequently, the claimant's discharge was for a past act and not disqualifying under unemployment insurance laws. Benefits are allowed.

#### **DECISION:**

The unemployment insurance decision dated November 6, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs