

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN M KELLER**  
Claimant

**ADVANTAGE SALES & MARKETING LLC**  
Employer

**APPEAL NO. 12A-UI-04105-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/26/12**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated April 2, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 4, 2012. The employer participated by Brandon Borts, retail supervisor. The employer was represented by Roxanne Rose. The record consists of the testimony of Brandon Borts and Employer's Exhibits 1-10.

**ISSUES:**

Whether the claimant was discharged for misconduct; and  
Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a broker for companies such as Gatorade, Quaker, and Tropicana. The claimant was hired on September 22, 2008, as a retail sales associate. The claimant drove to grocery stores and Wal-Mart stores. His last day of was February 17, 2012. He was terminated on February 17, 2012, for falsification of time sheets.

The employer had a strict policy that employees were not to log in for work until they arrive at the first store. The claimant's phone had a built in GPS system that recorded where an individual was when he or she logged into the system. The claimant logged in from home on February 1, 2012; February 3, 2012; February 6, 2012; and February 7, 2012. Falsification of records, including sign-in sheets, was grounds for termination. This is a written work rule of which the claimant was aware. The claimant admitted to Brandon Borts that he had logged in from home and not from his first call.

## REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to disqualification from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by a claimant to an employer is honesty. An employer can reasonably expect that an employee will not falsify any work record, including records relating to time worked. The employer has the burden of proof to establish misconduct.

The greater weight of the evidence is that the claimant knowingly and deliberately falsified his time records to indicate that he worked more hours than he actually did. He accomplished this by recording his start time from when he left from home instead of when he arrived at his first store. The claimant knew that the employer had a work rule, which stated that he was not log in until he reached his first store. The claimant worked for the employer since 2008. The claimant did not testify at the hearing and his reasons or explanations for these false timesheets are unknown. The claimant's dishonesty is misconduct. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to claims section for determination.

**DECISION:**

The decision of the representative dated April 2, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs