

**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**

**DONALD L BRODERSON
2409 DAVIE ST
DAVENPORT IA 52804**

**PER MAR SECURITY AND RESEARCH
CORPORATION
D/B/A PER MAR SECURITY SERVICES
C/O TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 05A-UI-06844-RT
OC: 05/22/05 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 for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Per Mar Security and Research Corporation, doing business as Per Mar Security Services, filed a timely appeal from an unemployment insurance decision dated June 24, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Donald L. Broderon. After due notice was issued, a telephone hearing was held on July 19, 2005, with the claimant participating. Jeff McAleer, Vice President and General Manager for the Quad Cities Area, participated in the hearing for the employer. Employer's Exhibits One, Two, and Three were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. When the administrative law judge called the claimant at approximately 2:06 p.m. to begin the hearing,

records did not show any telephone numbers or the names of any witnesses for the employer. The employer called at 2:09 p.m., and the administrative law judge called the employer at 2:11 p.m., and the employer participated in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Three, the administrative law judge finds: The claimant was employed by the employer, most recently as a fire alarm inspector, for approximately 22 years from April 7, 1983, until he was discharged on May 19, 2005. The claimant was discharged for falsification of employer records and theft of employer's time. The claimant was responsible for completing a "Per Mar Time Distribution Record," as shown at Employer's Exhibit One. This record is the time the claimant states he worked for the employer on each day of the form. The distribution records for the eight week period from payroll ending April 9, 2005, to payroll ending May 21, 2005, are shown at Employer's Exhibit One. The claimant completed the times as shown in the top line of each form, reporting the hours he worked each day and the totals for each week. In addition to this form, the claimant is required to complete a service ticket form, as shown at Employer's Exhibit Two. This service ticket form is a service call for the claimant, including the location where the service is to be performed and the time spent at that location performing the service. The claimant turns these forms into the branch office and these forms are used to bill the customers. All of the claimant's service ticket forms for the period covered in Employer's Exhibit One are shown at Employer's Exhibit Two. The times the claimant actually worked taken from the service ticket forms are shown on the Distribution Record about halfway down the columns, and the next line thereafter is the difference. In addition, when the claimant was performing certain service at a customer, he was required to notify central dispatch so that certain security devices could be taken offline. The times when this is done are in the computer, and the employer compared these computer records to the service ticket forms and the times agree. During the eight weeks in question, the claimant entered 201 hours worked on the Distribution Record, but the service ticket forms show only 133.7 hours worked, for a difference of 67.3 hours. The employer took into consideration the travel time of the claimant to the various locations of the customers in determining the actual time the claimant worked and the difference between the actual time worked and the claimant's reported time. The claimant may have spent some time working on other projects such as mapping and zoning a new building, calling customers, answering calls, or writing up NFTA forms. The employer has policies, as shown at Employer's Exhibit Three, prohibiting the misrepresentation of facts and the falsification of reports or records such as time records.

Pursuant to his claim for unemployment insurance benefits filed effective May 22, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,338.00 as follows: \$334.00 per week for seven weeks from benefit week ending June 4, 2005, to benefit week ending July 16, 2005. For benefit week ending May 28, 2005, the claimant reported vacation pay in a sufficient amount to nullify benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on May 19, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, falsification of time records and theft of employer's time. The employer's witness, Jeff McAleer, Vice President and General Manager for the employer's location in the Quad Cities, credibly testified that over an eight-week period, as shown at Employer's Exhibit One, the claimant reported time worked for payment totaling 201 hours, but that the claimant only worked 133.7 hours including time for travel, as shown in the service tickets at Employer's Exhibit Two. The employer has policies, as shown at Employer's Exhibit Three, that prohibit falsification of reports or records such as time records. The claimant denies that he falsified records or stole the employer's time. However, the claimant was confronted on three different occasions by the employer and was never able to explain the discrepancies in the time. At the hearing the claimant again denied falsifying the records and testified that he was doing other things beside service tickets, including mapping

and zoning of new buildings, calling customers, answering calls, and writing up NFTA forms. Mr. McAleer testified that, to the best of his knowledge, the claimant was not spending time on any of these matters during the eight weeks in question. The administrative law judge concludes that the claimant probably did spend some time on these other projects. However, in order to believe the claimant, the claimant would have had to have spent 67.3 hours on these other matters. Out of the total time that the claimant claimed in the eight-week period, 34 percent of the time the claimant worked would have had to have been devoted to these other matters. The administrative law judge must conclude that this is too much time spent on these other matters for the claimant's testimony to be credible. This is a difficult and close case, especially in view of the claimant's long employment with the employer. However, the administrative law judge is constrained to conclude that the employer's documents are accurate and reflect the claimant's time reported for pay and the time on the service tickets. These documents indicate that the claimant reported far more time worked for payment than he actually worked. The administrative law judge must conclude that the claimant falsified his time records, and these falsifications were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. The claimant testified that he was not required or told to document his other activities. This may well be true. However, when the claimant was confronted about the discrepancies in the reports on May 17, 18, and 19, the claimant could provide no explanations, nor can he really provide any explanations now. The claimant should have been able to provide clear and specific explanations for at least most of the discrepancy in time, but he did not do so. The claimant was first confronted about these discrepancies only a few days after the discrepancies were entered. The claimant should have been able to remember for several weeks back, at least, what he was doing with his time. The claimant could not do so. The administrative law judge concludes that the claimant's falsification of the time records was disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,338.00 since separating from the employer herein on or about May 19, 2005, and filing for such benefits effective May 22, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 24, 2005, reference 01, is reversed. The claimant, Donald L. Broderson, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$2,338.00.

kjw/kjw