

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RYAN J FITZPATRICK**  
Claimant

**UNIV OF IA COMMUNITY CREDIT UNION**  
Employer

**APPEAL 15A-UI-07461-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 17, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged due to work-related dishonesty. The parties were properly notified about the hearing. A telephone hearing was held on July 30, 2015. The claimant participated on his own behalf. The employer participated through Marketing Director Kari Hawkins, Assistant Vice President of Information Technologies Jim Kearney, Senior Vice President of Retail Steven Quigley, and Senior Vice President of Human Resources Sue Freeman. Employer's Exhibits 1 through 4 were received and admitted without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as the Vice President Branch Sales and Service Manager of the University of Iowa branch beginning July 9, 2012, and was separated from employment on June 4, 2015, when he was terminated. He was the highest level of management in his branch. One of the methods of tracking the performance of the branch and its employees is the use of member surveys, some of which are completed online. Either the member goes to the website unprompted and completes a survey or the member is invited to complete a survey after a transaction. The higher the member survey score on a scale of one to five, with five being the highest, the higher the member service score for the branch, which results in an incentive being paid to the employees and the manager.

On June 1, 2015, the marketing assistant notified Marketing Director Kari Hawkins that there were some suspicious customer surveys submitted for the claimant's branch. These surveys were suspicious as they were submitted on the final day of the month of May and all had perfect scores of five. There had been a total ten surveys submitted for the month of May including the eight received on the last day. Hawkins asked the assistant to determine if the member

accounts referenced in the surveys had transactions linked to them that would lead to the member completing the survey. The marketing assistant determined all of the member accounts referenced in the surveys were either closed or nonexistent. However, each of the surveys referenced a current teller number when providing information about the service received.

Hawkins then contacted the third party website servicer to pull the IP addresses from which the surveys were submitted. The IP address was the same for each of the surveys. Hawkins then asked the website servicer to look at the member surveys received in February, March, and April. Hawkins determined the same IP address submitted the following surveys for the claimant's branch on the last day of each month: 14 of the 17 total member surveys received in February 2015; 16 of the 19 total member surveys received in March 2015; and, 9 of the 13 total member surveys for the month of April 2015.

On the advice of the website servicer, Hawkins asked Assistant Vice President of Information Technologies Jim Kearney to search if IP address linked to the fraudulent surveys had logged into any of the credit union's online accounts. Kearny searched for account logons that occurred in the previous 90 days. He discovered that the IP address had been used to log into only one account and that was the claimant's account. He turned this information over to Hawkins who shared this information with Senior Vice President of Retail Steven Quigley.

Quigley and Senior Vice President of Human Resources Sue Freeman met with the claimant to confront him with their findings. He denied engaging in the conduct but did not know how it had happened. The claimant was terminated for violating the code of ethics and the employer's policies related to fraud and incentive plans. Since the claimant's termination, no additional fraudulent or suspicious customer surveys have been submitted for the claimant's branch.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In this case, the administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above and using her own common sense and experience. Upon doing so, the administrative law judge found the employer's version of events to be more credible than the claimant's recollection of those events. The person who submitted the surveys used a router with a distinct IP address. The same IP address was traced back to the person accessing the claimant's online banking account. The person who filled out the surveys had knowledge of the teller's four digit identification numbers. The surveys were submitted on behalf of closed or non-existent accounts. The claimant had a financial motive for submitting the fraudulent surveys. And, it should also be noted, the conduct ended after the claimant was terminated.

The claimant denied he engaged in the conduct; however, his denial is not persuasive. The claimant stated other people in his building had access to his router and computer as he does not keep them password protected. However, none of those individuals would have access to his online banking account and he did not have an explanation for why those individuals would submit fraudulent surveys for his bank branch.

The claimant was in a position of trust. He was entrusted with secure member information and the assets of the credit union and its members. His conduct was fraudulent and dishonest which called his trustworthiness in question. This is disqualifying misconduct even without prior warning. Benefits are denied.

**DECISION:**

The June 17, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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