

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J MORTLAND
Claimant

APPEAL NO. 10A-UI-14281-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 09/26/10
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The University of Iowa (UI) filed an appeal from a representative's decision dated October 15, 2010, reference 01, which held that no disqualification would be imposed regarding Michael Mortland's separation from employment. After due notice was issued, a hearing was held by telephone on December 3, 2010. Mr. Mortland participated personally. The employer participated by Mary Eggenburg, Benefits Specialist, and Rhonda Weaver, Human Resources Representative.

ISSUE:

At issue in this matter is whether Mr. Mortland 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: Mr. Mortland was employed by UI from June 9, 2008 until September 22, 2010. He was employed full time as a supervisor. He was discharged for forging a subordinate's signature on a performance evaluation. Mr. Mortland was a supervisor during his entire period of employment and was always responsible for conducting employee evaluations. Evaluations are due by the end of June of each year.

In September of 2010, an employee working under Mr. Mortland complained that he had not received his annual review. The employer discovered that Mr. Mortland had done an evaluation and signed the employee's name to it. He gave no indication on the evaluation that the employee was unavailable for a signature or that he was signing for the absent employee. He did not question anyone as to what he should do if an employee's absence prevented him from submitting the evaluation timely. As a result of forging the employee's signature, Mr. Mortland was discharged by UI. The above matter was the sole reason for the separation.

Mr. Mortland filed a claim for job insurance benefits effective September 26, 2010. He has received a total of \$3,384.00 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). Mr. Mortland was discharged for forging an employee's signature, which constituted dishonesty. He submitted the evaluation by the end of June but had not taken any steps to obtain a proper signature on the evaluation by the time the employee complained in September. Mr. Mortland's dishonesty was contrary to the type of behavior he knew or should have known was expected of him, especially in a supervisory capacity.

Mr. Mortland had other options short of forging the signature. He could have delayed submission of the evaluation or left the signature line blank with a notation that the employee was not available to sign. His dishonesty constituted a substantial disregard of the employer's standards. It is concluded therefore that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Mortland has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. 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 October 15, 2010, reference 01, is hereby reversed. Mr. Mortland was discharged by UI for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Mortland will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs