

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KORY D THOMAS
Claimant

APPEAL NO. 09A-UI-11770-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PUBLIC SAFETY COMMUNICATIONS INC
Employer

**Original Claim: 07/12/09
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

Public Safety Communications, Inc. (PSC) filed an appeal from a representative's decision dated August 6, 2009, reference 01, which held that no disqualification would be imposed regarding Kory Thomas' separation from employment. After due notice was issued, a hearing was held by telephone on September 1, 2009. Mr. Thomas participated personally. The employer participated by Steve Muller, Manager.

ISSUE:

At issue in this matter is whether Mr. Thomas 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. Thomas was employed by PSC from February 8, 2007 until July 11, 2009. He worked full-time performing fund-raising over the telephone on behalf of various charities. He was discharged for providing false information to a potential donor on October 8, 2008. The matter did not come to the employer's attention until July 7, 2009, when a lawsuit was filed by the Attorney General's office.

On October 8, 2008, Mr. Thomas was soliciting funds on behalf of the Association for Firefighters & Paramedics. One of the questions he was asked was how much of the donor's contribution went to the organization on whose behalf he was calling. Mr. Thomas responded that 80 to 85 percent went to the organization. He had been provided a listing of questions frequently asked by potential donors and the appropriate responses he should give. The first question on the document concerns the amount of the contribution that goes directly to the charity. The appropriate response is that the charity is guaranteed to receive at least 10 percent. Mr. Thomas also misled the donor into believing that the contribution would remain within Iowa when, in fact, it would be used nationally.

Mr. Thomas was paid an hourly wage for his services. However, he could receive increased pay depending on the amount of contributions he was able to secure. As a result of his conduct of October 8, Mr. Thomas was discharged on July 11, 2009.

Mr. Thomas filed a claim for job insurance benefits effective July 12, 2009. He has received a total of \$1,024.00 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. Thomas was discharged for providing false information to a potential donor. He had been provided written information that addressed the specific questions asked by the donor on October 8. Given this factor, the administrative law judge must conclude that he deliberately and intentionally gave false information as to what percentage of the donation would go to the charity and where the funds would be used geographically.

An individual might be more inclined to donate if it was felt that a large percentage of the contribution would remain for use within the state. Mr. Thomas deliberately gave false information in order to secure a donation and potentially increase his pay. He knew or should have known that his actions were contrary to the employer's standards. His actions were also contrary to the employer's best interests, as it could result in lawsuits if it were determined that funds were given based on false representations. For the reasons cited herein, it is concluded that substantial misconduct has been established and benefits are denied. Mr. Thomas has received benefits since filing his claim.

Based on the decision herein, the benefits received by Mr. Thomas 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 August 6, 2009, reference 01, is hereby reversed. Mr. Thomas was discharged for misconduct in connection with his employment. Benefits are withheld 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. Thomas will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw