

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KATARIO W PATTON**  
Claimant

**APPEAL NO: 19A-UI-04526-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE ANTHEM COMPANIES INC**  
Employer

**OC: 04/28/19**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 22, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 27, 2019. The claimant is currently incarcerated and as a result his sister, Lisa Patton, participated in the hearing on his behalf. Bryan Martin, Senior Human Resources Business Partner; Kristi Younis, Manager; and Tom Kuiper, Employer Representative; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time wellness and recovery specialist for The Anthem Companies from March 27, 2017 to May 1, 2019. He was discharged for falsifying company records.

The claimant was responsible for meeting with members outside the office on a regular basis with approximately 40 percent of his time spent out of the office. The employer regularly calls four members per month each wellness and recovery specialist is assigned to see how the visit went and answer any questions the member has for it. Cases need to be closed within 60 days.

On April 9, 2019, Manager Kristi Younis told the claimant a member's case needed to be closed due to the inability to contact the member. When Ms. Younis asked the claimant about the case he said he was going to close the case but the member had called and he had a meeting scheduled with the member that day in Perry. That particular member was on Ms. Younis list of four members to call and Ms. Younis called him to ask about the visit April 11, 2019. The member said he did not know who she was talking about when she referenced the claimant and that he had not received any visitors from the employer or any visitors at all that week. Ms. Younis checked the claimant's documentation and the claimant indicated the member

called about home health care but the home health was cancelled and the member said it was never scheduled. Ms. Younis documented the information and sent it to Director Kelly Pennington and Senior Human Resources Business Partner Bryan Martin asking for direction for the next step. Ms. Younis then called the other three members on her list for the month for the claimant and they all said they had spoken to the claimant but not met with him in person but the claimant documented they met in person. On April 19, 2019, a human resources representative instructed Ms. Younis to complete a corrective action form and talk to the claimant but the claimant was out due to illness that day. On April 22, 2019, Ms. Younis and her co-manager met with the claimant and went through the incidents in question with the claimant. The claimant admitted he did not conduct one of the four visits even though he documented he did so and put the visits on the calendar. He indicated he went home instead of making the visit. Two of the members he said he visited were minors whose mothers were with them and verified the claimant had not been to see them personally. The claimant's documentation said he was meeting one mother and her son in Grinnell but the mother said they never met and there was never a meeting scheduled but she had spoken with the claimant on the phone. Ms. Younis passed the information on to a human resources team and told the claimant they would meet again after human resources reviewed the situation. Ms. Younis put in a ticket for human resources who prioritize incidents based on severity. It can take up to seven days to receive a response because the team deals with threats and safety concerns first and the claimant's situation was classified as a lower level threat. After reviewing the claimant's actions the employer made the decision for immediate termination for falsifying company records and the claimant was discharged May 1, 2019.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,246.00 for the five weeks ending June 1, 2019.

The employer personally participated in the fact-finding interview through the statements of Equifax Representative Nancy Chapman.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant admitted to falsifying at least one document when he indicated he saw the member in Perry but actually went home for the day. The employer only audited four of the claimant's cases and all four denied the claimant had visited them even though the claimant documented he had done so. Three stated he talked to them on the phone but never scheduled in-person meetings with any of those members. The employer's evidence of the claimant's falsification of company records is persuasive.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide

detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer participated in the fact-finding interview personally through the statements of Equifax Representative Nancy Chapman. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$2,246.00 for the five weeks ending June 1, 2019.

**DECISION:**

The May 22, 2019, reference 01, decision is reversed. 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. The claimant has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$2,246.00 for the five weeks ending June 1, 2019.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn