

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**BHAVIK PATEL**  
Claimant

**WELLS FARGO BANK NA**  
Employer

**APPEAL NO. 23A-UI-02395-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/05/23**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On March 6, 2023, the employer filed a timely appeal from the February 23, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 6, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on March 22, 2023. Bhavik Patel (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Andromeda O'Neal of Barnett Associates/Equifax represented the employer and presented testimony through Gwen Jelsma. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or willful misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant was overpaid benefits.  
Whether the claimant must repay overpaid benefits.  
Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Bhavik Patel (claimant) was employed by Wells Fargo Bank NA as a full-time Home Mortgage Consultant from February 2020 until February 6, 2023, when the employer discharged him from the employment. The claimant performed his work duties in a call center. The claimant handled inbound from and outbound calls to mortgage loan customers and prospective customers. The claimant's duties included selling the mortgage loan to the customer and getting the loan application to the point where it could be processed. The claimant received appropriate training

at the start of the employment. The claimant was aware at all relevant times of the employer's expectation that the claimant interact with customers and prospective customers in a professional manner. The employer's expectation was that Home Mortgage Loan Consultants handle four to eight calls per day.

The final incident that triggered the discharge occurred on February 1, 2023 and concerned an inbound call with a prospective customer. The call lasted 24 minutes. The call was unremarkable for the first 16 minutes. At that point, the prospective customer indicated confusion about some financial figures the claimant provided. The claimant began to talk over the customer. At 21 minutes into the call, the claimant began to make unsolicited and unprovoked derogatory comments about the customer. These included:

I hope your read a lot and educated yourself while you were in prison.  
I get it, you work on cars, this is a mortgage.  
If you knew more about what you were talking about, you would not sound so silly.  
If you know how to use a computer, you would get further.

The caller had made no reference to spending time in prison. The claimant terminated the call after telling the caller he was wasting his time.

After the claimant terminated the call, he called the customer back. During the second call, the claimant apologized to the customer. The claimant asserted he had been joking in an unprofessional manner. The claimant told the customer that earlier call was probably going to get him fired. The claimant then continued to assist the customer with the mortgage loan inquiry.

Multiple coworkers overheard the claimant's demeaning comments and reported them to Gwen Jelsma, Consumer Direct Mortgage Sales Manager. The claimant also self-reported the call to Ms. Jelsma. The claimant acknowledged he had acted inappropriately, but attributed his conduct to him having a bad day.

The employer had issued a written reprimand to the claimant in October 2022 in response to similar inappropriate behavior during multiple calls over the course of a two-month period from July to September 2022. Those calls included two instances in which the claimant told the callers they were wasting his time. In another instance, the claimant made comments about the customer being incapable of using of computer due to their advanced age. The employer warned the claimant that the claimant's employment could be terminated in response to future similar conduct.

The claimant established an original claim for benefits that was effective February 5, 2023 and received \$3,306.00 in benefits for six weeks between February 5, 2023 and March 18, 2023. Wells Fargo Bank NA is the sole base period employer.

On February 22, 2023, an Iowa Workforce Development Benefits Bureau deputy held a telephonic fact-finding interview that addressed the claimant's separation from the employment. The deputy called the phone number of record to reach the employer's third-party representative, Barnett Associates/Equifax and spoke to an Unemployment Claims Specialist who stated there was no one available to participate in the fact-finding interview. The claimant participated in the fact-finding interview and willfully misrepresented the basis for the discharge. The claimant asserted the discharge was based on sales performance metrics. When the deputy asked about inappropriate conduct, the claimant knowingly and intentionally misled the deputy by omitting reference to the call that got him fired, omitting reference to the prior warning

for similar conduct, and disingenuously speculating that maybe the alleged inappropriate behavior had to do with making deadlines in matters involving realtors. After the Benefits Bureau deputy entered their decision into the IWD computer system on February 22, 2023 and after the decision was mailed on February 23, 2023, the employer submitted a timely protest via SIDES on February 24, 2023. The employer attached a number of relevant business records to the response. However, nothing in the protest materials indicated what the claimant had said to the customer on February 1, 2023. Instead, the protest materials spoke in generalized terms.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The claimant knowingly and intentionally violated the employer's professional conduct policy by directing derogatory, demeaning, and harassing comments at the caller on February 1, 2023. The February 1 conduct was sufficient by itself to demonstrate a willful and wanton disregard of the employer's interests constituting misconduct in connection with the employment. However, the final incident occurred in the context of the prior written warning similar behavior and the pattern of conduct that led to the prior warning. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

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 § 96.3(7)(a) and (b).

The claimant received \$3,306.00 in benefits for six weeks between February 5, 2023 and March 18, 2023, but has been denied benefits as a result of this decision. The benefits are an overpayment.

Iowa Administrative Code rule 871-24.10(1) and (4), regarding employer participation in fact-finding interviews, provides as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(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.

...

(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.

The employer did not participate in the fact-finding interview within the meaning of the law. The employer did not participate in the phone call and did not submit documents in time for consideration at the fact-finding interview. The protest documentation submitted after the deputy's decision was entered and mailed spoke generalized terms without providing the particular circumstances of the final incident that triggered the discharge.

The claimant engaged in willful misrepresentation during the fact-finding interview. The claimant bogusly asserted the discharge was based on sales performance metrics. When the deputy asked about inappropriate conduct, the claimant knowingly and intentionally misled the deputy by omitting reference to the call that got him fired, omitting reference to the prior warning for similar conduct, and disingenuously speculating that maybe the alleged inappropriate behavior had to do with not making deadlines in matters involving realtors.

Due to the claimant's willful misrepresentation at the fact-finding interview, the claimant must repay the overpaid benefits. The employer's account is relieved of charges, including charge for benefits already paid to the claimant.

**DECISION:**

The February 23, 2023 (reference 01) decision is REVERSED. The claimant was discharged on February 6, 2023 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$3,306.00 in benefits for six weeks between February 5, 2023 and March 18, 2023. The claimant must repay the overpaid benefits. The employer's account is relieved of charges, including charge for benefits already paid to the claimant.



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James E. Timberland  
Administrative Law Judge

March 27, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.