

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

AARON D MCVICKER

Claimant

APPEAL 22A-UI-19905-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/13/22

Claimant: Respondent (2)

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

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 9, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2023. Claimant Aaron D. McVicker did not participate. Employer Casey's Marketing Company participated through human resources generalist Melissa Klenzman and district manager Robert Mold. Employer's Exhibits 1 – 3 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager from March 28, 2022, and was separated from employment on November 14, 2022, when he was discharged.

On November 8, 2022, claimant called human resources generalist Melissa Klenzman to notify her that he and seven of his coworkers won a Powerball lottery drawing on a ticket purchased at his store location. Ms. Klenzman asked claimant several questions about the purchase to ensure that it followed store policies regarding employee purchases of lottery tickets. Claimant told Ms. Klenzman he was not on the clock when he purchased the ticket, he did not sell it to himself, and he did not run the register or the lottery machine. He stated he bought the ticket on November 7, 2022, between 6:00 and 7:00 p.m. Ms. Klenzman told claimant she needed to confirm some information and she would get back to him.

Ms. Klenzman confirmed that claimant had not clocked in for work on November 7, 2022, but that he was working on that date during the time he stated he purchased his ticket. After viewing security video footage and confirming receipts, claimant's statements of the time and date of his purchase of the winning lottery ticket was not accurate.

Ms. Klenzman and claimant spoke again later on November 8, 2022, when she learned he was on his way to cash in the ticket. She reminded him she was still verifying information and he could not cash in the ticket yet. Ms. Klenzman asked follow-up question to try to determine the correct information regarding the purchase of the ticket. During this conversation claimant mentioned that he sometimes buys "mistake" tickets. These are tickets that are mistakenly printed out when a customer is purchasing a lottery ticket and an error is made when printing the ticket, for example, the incorrect dollar amount for the price of the ticket is entered. These tickets are set aside, and employees try to sell them.

On November 9, 2022, Ms. Klenzman spoke to claimant two additional times. She again attempted to obtain the correct order of events, as well as the timing of events. During one of these calls, claimant informed Ms. Klenzman that he was very excited during the initial call and he gave her incorrect information regarding the purchase of the winning ticket. He stated the winning ticket was actually purchased on November 8, 2022, at 12:30 p.m. He also informed her the winning ticket that he purchased was a mistake ticket. During each of the phone calls over the two-day period, claimant provided different dates and times for the purchase of the winning lottery ticket.

Employer investigated the winning lottery ticket purchase by reviewing security video footage, store receipts, and obtaining information about the winning ticket from the Iowa Lottery. It determined the winning lottery ticket was a ticket printed out during the evening of November 7, 2022, as a mistake and was set aside. On November 8, 2022, at 12:20 p.m., an employee scanned the mistake ticket and discovered it was a \$100,000 winning ticket. The employee who discovered it was a winning ticket immediately contacted claimant, who arrived at the store and purchased that ticket at 12:36 p.m.

Employer terminated claimant's employment on November 15, 2022, for being untruthful during its investigation. Claimant violated employer's workplace conduct policy through his repeated dishonest statements provided regarding the ticket.

The administrative record reflects that claimant has not received unemployment benefits since filing a claim with an effective date of November 13, 2022. Employer did not participate in the fact-finding interview.

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.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

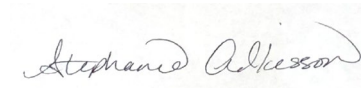
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Claimant knowingly provided false information to employer during its investigation of the purchase of a winning lottery ticket by claimant at his store. Not only did he lie to employer multiple times during the investigation, but he also purchased the ticket only after confirming it was a winning ticket. As a store manager, claimant was held to a higher standard than other employees. These acts of dishonesty on the part of the claimant rise to misconduct as employer has a right to expect honesty, if not absolute adherence to its rules without a warning. The administrative law judge holds that claimant was discharged for an act of misconduct, and as such is disqualified for the receipt of unemployment insurance benefits.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The December 9, 2022, (reference 01) unemployment insurance decision is reversed. 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 issues of overpayment, repayment and chargeability are moot.

A handwritten signature in cursive script, reading "Stephanie Adkisson", is written over a light blue horizontal line.

Stephanie Adkisson
Administrative Law Judge

January 23, 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
4th 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.