

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER M GOODSON
Claimant

APPEAL NO. 13A-UI-10130-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 07/28/13
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.50(10) – Employer Participation

STATEMENT OF THE CASE:

The employer, Kwik Trip, filed an appeal from a decision dated August 28, 2013, reference 01. The decision allowed benefits to the claimant, Christopher Goodson. After due notice was issued, a hearing was held by telephone conference call on October 2, 2013. The claimant participated on his own behalf. The employer participated by Store Leader Bambi Blaess. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Christopher Goodson was employed by Kwik Trip from November 1, 2010 until July 12, 2013 as a part-time maintenance person. He had been made aware of the company policies and procedures at the time of hire. The company prohibits the use of personal cell phones while on duty except for the specific ten-minute breaks. This policy was discussed again with him by Store Leader Bambi Blaess on June 2, 2013.

In May 2013 a surveillance camera was installed in the utility room. This was a routine installation. On June 21, 2013, Ms. Blaess was preparing to go on vacation and taking a staff member around the area. She noticed a piece of plastic leaning up against the wall covering the camera aperture. This is a very small hole, about the size of the tip of a pen. She removed the plastic which was only leaning against the wall but thought it had only fallen there.

While she was on vacation Mike Beniot, the assistant store leader, found the same piece of plastic covering the aperture on June 25, 2013, and he removed it. He reported this to Ms. Blaess because he found it suspicious it had been put back after she had removed it.

When the store leader returned on July 1, 2013, she discovered a piece of double sided tape had been placed over the aperture and began an investigation. She reviewed video images dating back to May 18, 2013. She saw Mr. Goodson had put the plastic up against the aperture on June 15, 2013, replaced the plastic on June 21, 2013, two hours after she had removed it, and put the piece of tape on the area June 26, 2013. She removed the tape on July 8, 2013, and he replaced it two days later.

In addition to covering the camera she witnessed Mr. Goodson in the utility room to use his personal cell phone as many as 15 times. She checked the information from other cameras and confirmed these occasions took place at time other than his regular ten-minute break.

She reported her findings to her supervisor Kimberly Keil, who came and viewed the video footage herself. The decision was made to discharge and the claimant was informed on July 12, 2013. He admitted he knew the cell phone policy but maintained he had covered up the hole in the wall without knowing it was a camera because he was afraid it would let in drafts or insects. He did not explain how merely propping a piece of plastic over the hole would prevent either.

Christopher Goodson has received unemployment benefits since filing a claim with an effective date of July 28, 2013. The employer did participate in the initial fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge does not accept that the claimant did not know the hole he was attempting to obscure was a camera. If, as he asserted, he needed caulk to fill the hole he had several months to do so. The fact he made no effort to get the necessary item indicates he knew it was a camera and did not intend to do anything but hide his activities.

He was a maintenance person and certainly knew where other cameras were and what they looked like. He attempted to hide his violation of the cell phone policy by deliberately interfering with the camera. This is a double violation of known policy and the code of ethics.

The employer has the right to expect honesty and integrity from its employees in the performance of their duties, not interfering with company equipment or using company time for her personal business. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

DECISION:

The representative's decision of August 28, 2013, reference 01, is reversed. Christopher Goodson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$1,992.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css