

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOHN HAZELWOOD**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 22A-UI-00166-JD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/24/21  
Claimant: Appellant (1)**

Iowa Code § 96.5 (2) a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On November 26, 2021, the claimant filed an appeal from the November 23, 2021, (reference 02) unemployment insurance decision that benefits based on a determination that the claimant was discharged due to job disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2022. Claimant, John Hazelwood, participated and testified. Employer participated through witness Kathy Ball, Store Leader. Employer's Exhibit 1-3 were offered and admitted. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant discharged from employment for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 6, 2021. Kathy Ball was his direct supervisor. Claimant last worked as a full-time assistant store lead. Claimant was separated from employment on October 29, 2021, when he was discharged for violating a known company policy. Specifically the claimant purchased a lottery ticket while on his paid 15-minute break on October 24, 2021. The employer's Code of Conduct specifically stated that "purchasing, playing, or redeeming lottery tickets, lotto tickets, or pull-tabs while clocked in" (Emp. Ex. 2 (#6)). The employer's loss prevention policy further stated "lottery, lotto, tickets, and pull-tabs may not be purchased, played, or redeemed while the co-worker is clocked in. This is grounds for immediate termination". (Emp. Ex. 2(#4)). The claimant acknowledged receipt of these policies on July 7, 2021 and September 5, 2021.

The claimant testified that he knew that any violation of the lottery purchasing policy while clocked in was immediate grounds for termination. The claimant acknowledged that he had a lapse in judgment but that he should have been given a warning instead of terminated.

## 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.

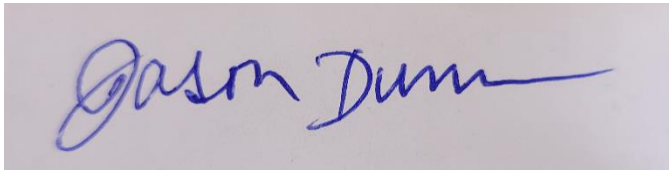
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy regarding employee purchasing of lottery products while on duty was reasonable. Claimant's violation of this policy was disqualifying misconduct. Benefits are denied.

**DECISION:**

The November 23, 2021, (reference 02) unemployment insurance decision is affirmed. 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.



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February 23, 2022  
Decision Dated and Mailed

jd/mh