

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMDREW J LANGE**  
Claimant

**APPEAL NO. 13A-UI-09627-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 07/21/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 12, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on September 25, 2013. Claimant participated. Employer participated through (representative) Kimberly Keil, District Leader and Will Welch, Food Service District Leader. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a retail store leader beginning on July 20, 2009 through July 24, 2013, when he was discharged. On July 2 the claimant met with his supervisor Kimberly Keil to talk about discharging an employee who worked directly for the claimant. Ms. Keil covered how the discharge should take place and the claimant agreed and said nothing to indicate he had already discharged the employee. After Ms. Keil left the store, the claimant called her and told her that he had in fact already discharged the claimant. At hearing when asked why he had not told Ms. Keil that he had already discharged the employee during their July 2 meeting, the only explanation the claimant had was that he was embarrassed and he should have known better. The claimant had discharged employees many times previously and knew that the human resources department had to give approval before any employee was discharged. After learning that the claimant had discharged an employee improperly Ms. Keil drove back to the store the next day to meet with the claimant to discuss what had occurred. During that meeting, the claimant after direct questioning by Ms. Keil admitted that he may have "fudged" an employee's time card without following policy. The claimant had been trained on all company policies and as a manager knew when and how he was allowed to change an employee's time card. The claimant was going on vacation the next day or the day after, so Ms. Keil decided to investigate when he was gone. While he was gone she and the human resources department researched the records to see if they could find the situation when the claimant had changed an employee's time card. Neither Ms. Keil nor a human resources employee could locate the

changed time card so when the claimant returned from vacation on July 11 he was questioned again about which employee time card he had changed and when he had done so. When the claimant provided the additional information the employer was able to go into the records and see where the employee had actually punched in but the claimant had used the computer system to override the punch in and decreased the hours of work the claimant was paid for. The claimant did this to decrease the employee's overtime status. The claimant did not follow company procedures when making the change nor did he notify the employee he was making the change. The claimant's actions are violation of the Fair Labor Standards Act and could subject the employer to penalties from the federal government. The employer restored the missing 58 minutes of overtime to the employee and paid her after discovering the claimant's change to her time card. The claimant was dishonest with Ms. Keil and did not follow proper company procedures. The claimant knew or should have known from his training that deliberate alteration of another time card was grounds for immediate discharge.

### **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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew or should have known that he was required to be honest with the employer. He was dishonest initially with Ms. Keil when he failed to tell her he had already discharged an employee. Additionally, the claimant altered a time card without permission and without following company procedures. His actions were a violation of federal law that could lead the employer to be penalized. The claimant's alteration of the time card is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The August 12, 2013, (reference 01) 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs