

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JOHN R MILLWOOD  
4515 RICKERHILL RD  
DAVENPORT IA 52803

KWIK SHOP INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 04A-UI-12925-HT  
OC: 10/24/04 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.5-1 – Quit

STATEMENT OF THE CASE:

The claimant, John Millwood, filed an appeal from a decision dated November 23, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 29, 2004. The claimant participated on his own behalf. The employer, Kwik Shop, participated by Store Manager Jeremy Glass and was represented by Employers Unity in the person of Michelle Stovall.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: John Millwood was employed by Kwik Shop from September 2003 until October 21, 2004. He was a full-time assistant manager.

In 2003, when he first applied for work, he indicated on his application he had not been charged or convicted of any felony. A criminal background check was done and it showed a charge of driving while his license was under suspension in 2001 had been made against Mr. Millwood. He was discharged for falsification of his application but contacted Kate Snyder in human resources. She agreed to reinstate him if he could establish the criminal check was in error. The clerk of Linn County District Court contacted the employer and confirmed there were no such charge on file against Mr. Millwood in that county.

In October 2004, the claimant had applied for work at Anderson Erickson Dairy. It did another criminal background check and notified him there was a charge in Johnson County District Court of driving while his license was under suspension. On Sunday, October 17, 2004, the claimant called Store Manager Jeremy Glass and said he would not be in to work the next day as he had made arrangement to turn himself in to the authorities in Johnson County in order to get this matter resolved.

Mr. Glass contacted the area supervisor and Ms. Snyder to discuss the matter with them. Under company policy the claimant was to be suspended until the legal matter was resolved. He was notified of this by Mr. Glass when he returned to work the next day, and he also discussed it with Ms. Snyder. He was to notify Kwik Shop when his court hearing had determined the matter, but the hearing was not set until December 28, 2004. He told Mr. Glass that he did not think he could go six weeks without a paycheck, and did acknowledge he was looking for other work.

The court matter was determined on December 28, 2004, and the claimant negotiated with the county attorney to reduce the felony to a misdemeanor of driving without having his license present. He did not return to Kwik Trip and offer to return to work because of the original fact-finding decision in this case, which determined him to be a voluntary quit.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The claimant was suspended for filing a false work application effective October 19, 2004. He had certified he had not been charged with a felony and this was incorrect. Although he had the Linn County Clerk of Court confirm the charges were not pending in that county, charges were still outstanding in Johnson County. He was notified he would be under suspension until the court date could clear up the matter. The suspension is treated as a discharge for purposes of unemployment, and the claimant falsified his application for work, which is misconduct under the provisions of the above Administrative Code section.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant was found guilty of a reduced charge of not having his license with him, which is a misdemeanor. He did not then return to Kwik Shop, as instructed, to provide documentation that he was not charged or convicted of a felony. His reasons for failing to do so was because the Iowa Workforce Development fact-finding decision stated he had quit, although he himself never believed he had quit. It was therefore within his power to provide the documentation to Ms. Snyder and be reinstated as he had been before. His failure to provide the required documents must be considered a voluntary quit without good cause attributable to the employer. He is disqualified.

DECISION:

The representative's decision of November 23, 2004, reference 01, is affirmed. John Millwood is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/b