

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEAN E PIEPER
Claimant

APPEAL NO. 12A-UI-00406-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 12/11/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kwik Trip, Inc. filed a timely appeal from an unemployment insurance decision dated January 6, 2012, reference 01, that allowed benefits to Dean E. Pieper. After due notice was issued, a telephone hearing was held February 9, 2012 with Mr. Pieper participating and presenting additional testimony by Tony Little. Store Leader Jessica Stortz participated for the employer. Employer Exhibit One was admitted into evidence. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Dean E. Pieper was employed by Kwik Trip, Inc. from September 24, 2010 until he was discharged December 8, 2011. Mr. Pieper received training on the company's code of conduct and loss prevention policies when he was hired. An up-to-date version of the policies is available to employees on the Kwik Trip, Inc. intranet. On at least six occasions after hire, Mr. Pieper signed acknowledgement forms that he had read and understood the company's loss prevention policy and that violation of the policy could lead to discharge. The policy prohibits employees from "purchasing, playing or redeeming lottery tickets, lotto tickets or pull-tabs while clocked in." On December 4, 2011, Mr. Pieper redeemed a lottery ticket while on duty. Store Leader Jessica Stortz suspended Mr. Pieper on December 5 and discharged him on December 8, 2011 for violating the policy.

Mr. Pieper has received unemployment insurance benefits since filing a claim effective December 11, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

The claimant acknowledged the incident that led to his discharge. His defense was that he had not read the policy. An employee who fails to read and follow clear company rules does so at his or her own peril. The claimant knowingly chose not to familiarize himself with the company's expectations. While he did not redeem the lottery ticket with the specific intent of violating policy, he performed the act willingly. Benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated January 6, 2012, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs