

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**ANDREW R BOOSE**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL NO. 22A-UI-15545-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/20/21  
Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On July 26, 2022, the employer filed a timely appeal from the July 21, 2022 (reference 04) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on June 7, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on August 29, 2022. Andrew Boose (claimant) did not comply with the hearing notice instructions to call the designated number at the time of the hearing and did not participate. Peter Sinnett represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBIN and DBRO) and the quarterly wage record (WAGE-A). At the employer's request, the administrative law judge took official notice of the fact-finding materials. The employer had requested the fact-finding materials prior to the hearing date. The Appeals Bureau sent the fact-finding materials to the parties prior to the hearing date.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant was overpaid benefits.  
Whether the claimant must repay overpaid benefits.  
Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Andrew Boose (claimant) was employed by Kwik Trip, Inc. as a full-time General Maintenance Technician from August 2021 until June 7, 2022, when Peter Sinnett, Maintenance Supervisor, discharged him from the employment. Mr. Sinnett was the claimant's supervisor from January 2022 until the end of the employment. The claimant performed his duties at an industrial park in La Cross, Wisconsin. The claimant's duties included light remodeling, light plumbing, and lawn maintenance. The claimant was part of a maintenance team that served 16 buildings. The claimant's wage was \$21.00 an hour. The claimant's work hours were 3:30p.m. to 12:00 a.m.,

Monday through Friday. The claimant would receive one 15-minute paid break and one 30-minute unpaid lunch break during this shift. The claimant was required to scan his badge to clock in at the start of the shift, to clock out for his lunch break, to clock in after his lunch break, and to clock out at the end of his shift.

The final and sole conduct that triggered the discharge occurred on May 31, 2022. Before Mr. Sinnett left for the day at 4:00 p.m., the claimant asked Mr. Sinnett whether the claimant could “look at” his personal vehicle in the employer’s facility to check engine fluid levels. Mr. Sinnett approved the claimant to “look at” his car for the purpose of checking engine fluid levels, but specified the act needed to take place after the claimant’s shift ended, while the claimant was off the clock. At 4:30 p.m., shortly after Mr. Sinnett left for the day, the claimant brought his personal vehicle into the employer’s facility. The claimant worked on the vehicle for 45 minutes while he on the clock and while he was supposed to be performing work for the employer. At 8:40 p.m., the claimant again commenced working on his personal vehicle for an hour while he was on the clock and was supposed to be performing work for the employer. At 9:52 a.m., the claimant worked on his vehicle for another eight minutes while he was on the clock and was supposed to be performing work for the employer. At 10:56 p.m., the claimant worked on his vehicle for another 19 minutes while he was on the clock and was supposed to be performing work for the employer. The claimant did not clock out at any time during his shift. The claimant was supposed to document performance of work duties by completing separate work orders for the tasks he completed during his shift. The claimant created and submitted false work orders to make it look like he had completed eight hours on work orders. The claimant’s clock and out record for the day make it look like the claimant had been engaged in work on behalf of the employer for eight hours and 26 minutes.

On June 1, 2022, Mr. Sinnett reviewed surveillance records and saw the several times the claimant had worked on his personal vehicle while on the clock.

On June 3, 2022, Mr. Sinnett spoke to the claimant regarding the surveillance video record. Mr. Sinnett asked the claimant why he thought working on his vehicle on the clock was okay or acceptable. The claimant responded, “I don’t know.” Mr. Sinnett asked the claimant whether anyone had given the claimant the impression it was okay to work on his personal vehicle on company time. The claimant said no one had given him that impression. Mr. Sinnett asked the claimant whether the claimant had seen any other employee working on his or her personal vehicle on company time. The claimant said he had not.

On June 7, 2022, Mr. Sinnett notified the claimant he was discharged from the employment for falsifying company records and for dishonest conduct. The claimant’s conduct violated the Code of Conduct policy the employer had provided to the claimant early in the employment.

The claimant established an “additional claim” for benefits that was effective June 12, 2022. The additional claim was based on a June 20, 2021 original claim. The claimant received \$493.00 in benefits for the week that ended June 18, 2022. The claimant then established a new benefit year that was effective June 19, 2022, the claimant received \$466.00 in benefits for the week that ended June 25, 2022. The total benefits disbursed for the two weeks was \$959.00. Kwik Trip is not a base period employer for purposes of the benefit year that started June 20, 2021, but is a base period employer for purposes of the new benefit year that was effective June 19, 2022.

On July 20, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview. The employer submitted documents in lieu of having a company representative participate in the fact-finding interview phone call. The materials submitted by the employer

included a detailed account of the conduct that triggered the discharge and the policies violated. The claimant participated in the fact-finding interview call and made multiple intentionally misleading statements, which included an assertion the claimant was entitled to an additional break, that a team lead had given permission for the claimant to work on his vehicle, and that the employer had a lack of work for the claimant.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The claimant acted with willful and wanton disregard for the employer's interests on May 31, 2022. The claimant unreasonably disregarded the employer's directive not to work on his vehicle on company time or during his shift. The claimant dedicated an extensive amount of time to his personal task over the course of the shift. The claimant falsified work orders. The claimant falsely reported his work time to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for 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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$959.00 in benefits for the two weeks between June 12, 2022 and June 25, 2022. This decision disqualifies the claimant for those benefits. Accordingly, the benefits are an overpayment of benefits. The employer satisfied the fact-finding interview participation requirement through the written materials the employer submitted for that purpose. See Iowa Admin. Code rule 871 24.10. Even if the employer had not satisfied the participation requirement, the claimant intentionally misrepresented material facts at the fact-finding interview. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

**DECISION:**

The July 21, 2022 (reference 04) decision is reversed. The claimant was discharged on June 7, 2022 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$959.00 in benefits for the two weeks between June 12, 2022 and June 25, 2022. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.



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James E. Timberland  
Administrative Law Judge

October 3, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.