

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW L GILBERT
Claimant

APPEAL NO. 07A-UI-04512-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHOPKO STORES OPERATING CO
Employer

OC: 04/08/07 R: 04
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Shopko Stores Operating Company (Shopko) filed an appeal from a representative's decision dated April 24, 2007, reference 01, which held that no disqualification would be imposed regarding Andrew Gilbert's separation from employment. After due notice was issued, a hearing was held by telephone on May 21, 2007. The employer participated by Nate Blazejewski, Store Manager. Exhibits One through Nine were admitted on the employer's behalf. Mr. Gilbert did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Gilbert was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gilbert was employed by Shopko from May 9, 2006 until April 9, 2007 as a full-time seasonal specialist. He was discharged after a series of counselings and warnings.

On June 4, 2006, a manager spoke with Mr. Gilbert about his attendance. He failed to report for work that day and, when called and told he had to come in, said he was not coming in. He was advised that he needed to work when scheduled. He received another counseling on October 3 because he used profanity on the sales floor due to being upset with comments made to him by an assistant manager. The store manager spoke to Mr. Gilbert on December 7 concerning some negative signs that had been posted on the store's truck tracking board. Mr. Gilbert three times denied having any knowledge of how the signs got there. He admitted to putting them up only after the manager told him his coworkers said he put them up.

Mr. Gilbert received a written warning on January 29, 2007 because he altered his schedule without authorization and failed to complete his work duties. He reported to work at 10:00 rather than 10:30 p.m. and left at 6:30 rather than 7:00 a.m. He did not notify anyone that he changed

his schedule. He was told by the overnight supervisor that he had to complete all required tasks before he left for the day. He did not complete the required duties before leaving and did not notify anyone that he was leaving. On February 6, Mr. Gilbert was assigned to work in the electronics department. He notified the manager that he could not find the keys he had been given for the department. There was only the one set of keys and they have never been located. Mr. Gilbert was the last individual to sign out the keys. An MP3 player valued at \$69.99 was removed while the keys were missing.

On April 3, Mr. Gilbert was directed to move certain plants to the greenhouse to prevent them from freezing. He did not do so and the plants froze. On April 5, he was told to water plants inside the greenhouse before performing other duties inside the store. However, he unwrapped pottery rather than water the plants as directed. When questioned as to why he was not watering the plants as directed, Mr. Gilbert said the manager did not “fucking” care that it was cold outside. He had been provided gloves, hand warmers, and a hat to wear in the greenhouse. Mr. Gilbert worked on April 6 and was notified of his discharge on April 9, 2007.

Mr. Gilbert filed a claim for job insurance benefits effective April 8, 2007. He has received a total of \$357.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Gilbert worked for Shopko for approximately 11 months. During that time, he was absent without appropriate notice on June 4 and left early without authorization on January 27. He failed to complete work duties on January 27 in spite of specific verbal instructions that he could not leave until his work was done. He used inappropriate language on the sales floor on October 3 and was initially dishonest with his manager when questioned about negative signage on December 27. He failed to secure the keys to the electronics department on February 5, resulting in the loss of merchandise and the expense of having to change the locks. The above conduct demonstrated a disregard for the standards he knew the employer expected of him.

Based on the counselings and warnings he received, Mr. Gilbert had to have known that his continued employment with Shopko was in jeopardy. In spite of the prior warnings, he failed to follow instructions on April 3. He was told to move plants so that they would not freeze. His failure to move the plants resulted in them freezing, causing a monetary loss to the employer. Mr. Gilbert again failed to follow instructions on April 5 when he was told to water the plants in the greenhouse before performing other duties. Instead, he unwrapped pottery. The evidence does not establish any justification for his failure to follow the instructions given on April 3 and April 5.

Mr. Gilbert knew he was expected to follow the instructions given him by his managers. The instructions given were clear and unambiguous. The evidence established a pattern and practice on his part of disregarding the interests and standards of his employer. For the reasons stated herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Gilbert has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 24, 2007, reference 01, is hereby reversed. Mr. Gilbert was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Gilbert has been overpaid \$357.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs