

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

JAMIE R WILSON
Claimant

ATLANTIC BOTTLING CO
Employer

APPEAL 23A-UI-03971-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/26/23
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.5(2)d(2) – Discharge for Violation of Company Rule
Iowa Code § 96.5(2)d(13) – Discharge for Theft

STATEMENT OF THE CASE:

On April 17, 2023, claimant Jamie R. Wilson filed an appeal from the April 13, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that he was discharged from employer Atlantic Bottling Company for theft of company property. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Wednesday, May 3, 2023. Claimant Jamie R. Wilson participated. Employer Atlantic Bottling Company participated through Shirley Jones, Human Resources Business Partner. Employer's Exhibits 1 through 5 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on September 3, 2019. Most recently, he worked full-time hours as a route support specialist. Claimant's employment ended on March 28, 2023, when the employer discharged him after determining he had stolen lottery tickets from a customer's property.

On March 20, claimant was making a delivery to a Kwik Trip store in the course of his regular job duties when he found several books of lottery tickets in the store's cooler. After discovering the books of lottery tickets, he positions himself with his back to the cooler entrance and he removes five of the ten-dollar tickets from one of the ticket books. (Exhibit 5, pages 5 and 6) Claimant then put the books of lottery tickets (minus five tickets) back on the shelf and continued with his route. Later that morning, the Kwik Trip store leader re-enters the cooler to retrieve the lottery ticket books. At some point that day, the Kwik Trip store realized the three tickets had been stolen. Kwik Trip contacted the Iowa Lottery, who deactivated the tickets. Kwik Trip commenced an internal investigation and determined claimant (known then only as the "Coke vendor driver") stole the missing lottery tickets.

On March 28 at 6:53 a.m., claimant went to a Kwik Trip store in Waterloo and attempted to cash one of the stolen lottery tickets. (Exhibit 5) Security camera footage from the store shows it was the same Coke vendor driver as the driver who had taken the lottery tickets from the cooler at store 569. (Exhibit 5, pages 5, 8, and 9) After claimant attempted to cash in one of the stolen lottery tickets, Kwik Trip reached out to the employer to obtain claimant's name so they could pursue charges against him and ban him from their stores. (Exhibit 4) When Kwik Trip contacted the employer, they provided an email summary of claimant's theft, a detailed synopsis of events, and photos documenting claimant's theft and attempted redemption of one of the stolen tickets. (Exhibits 4 and 5)

When the employer received Kwik Trip's information, they were able to identify the "Coke vendor driver" as the claimant. Mason City general manager Keith Lensing and Jones relied on Kwik Trip's investigation and supporting documentation and determined claimant should be discharged due to the allegations of theft and his inability perform work on Kwik Trip property, which was a part of his daily job duties. Lensing told claimant that if he was later found innocent of the theft, he could let the employer know and they would talk about rehiring him at that time.

The employer maintains an Employee Conduct Guide within its Employee Handbook. (Exhibit 3) Under this guide, employees are advised to act "with honesty and integrity" and to "positively reflect the [employer] in interactions with customers, vendors, consumers, and other outsiders." (Exhibit 3, provision 6) Additionally, the guide prohibits theft from the employer, from coworkers, and from customers. (Exhibit 3, provision 8) The employer takes a zero-tolerance approach to theft.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

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 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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(13) Theft of an employer or coworker's funds or property.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

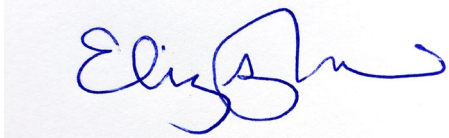
The claimant has argued he did not steal the lottery tickets from the Kwik Trip cooler. He claims he happened to pick up one of the stolen tickets in the parking lot of the store, discover that it was a winning ticket, and try to redeem it in line with his general practice. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, I find the claimant is not a credible witness. I reviewed the photo stills from the surveillance video and spoke with the claimant. His explanation for how he happened to end up with one of the stolen lottery tickets is beyond reasonable belief. Additionally, he is identified by Kwik Trip in the video stills as the sole individual who spent significant time (approximately 35 seconds) standing right next to the lottery tickets, after picking up the lottery tickets in the cooler. This is beyond mere coincidence. I find Kwik Star's documentation credible: it was prepared in support of banning a thief from corporate property and pursuing criminal charges. The third-party customer/corporation has an interest in protecting their own assets and in preparing truthful documentation as a regular course of business to ensure both its own employees and any vendors on its property are not stealing.

Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy. Here, while the claimant stole the property of a customer of the employer and not the employer itself, the conduct remains disqualifying. Claimant stole a customer's property while in uniform and performing his job duties. His actions violated multiple of his employer's policies, damaged both his reputation and his employer's reputation, and amounted to theft. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The April 13, 2023 (reference 01) unemployment insurance decision is affirmed. 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.



Elizabeth A. Johnson
Administrative Law Judge

May 9, 2023
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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**

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.