

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

PENI J KAMPMAN
558 MONTERO DR
WATERLOO IA 50703-5438

KWIK TRIP INC
1626 OAK ST
PO BOX 2107
LACROSSE WI 54602

Appeal Number: 06A-UI-06055-S2T
OC: 04/02/06 R: 03
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kwik Trip (employer) appealed a representative's June 2, 2006 decision (reference 04) that concluded Peni Kampman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2006. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Connie Graham, Store Leader.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 7, 2006 as a part-time cashier.

When the claimant filled out her application for employment on April 7, 2006, she answered "no" to the question as to whether she had ever worked for the employer. She certified her answers were true and correct. The employer has a company policy which states that anyone who falsifies an application for employment will be terminated.

Later the employer learned that the claimant worked for the employer at a different location. She left work without notice. On April 25, 2006, the employer questioned the claimant. The claimant indicated she thought she answered "yes" when the application asked if she had previously worked for the employer. The employer terminated the claimant on April 25, 2006, for falsifying an application for employment. The employer felt the claimant was a good worker.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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(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.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer may legitimately have been concerned about the claimant's past employment with the company. While understanding the concerns of the employer, the judge does not believe it has established the falsification of the application could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits.

DECISION:

The representative's decision of June 2, 2006, (reference 04) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

bas/pjs