

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARELLA A JACKSON**

Claimant

**KWIK TRIP INC**

Employer

**APPEAL NO: 09A-UI-11522-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/09**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 5, 2009, reference 04, that held the claimant was not discharged for misconduct on June 18, 2009, and benefits are allowed. A telephone hearing was held on August 26, 2009. The claimant participated. Kim Keil, District Leader, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time cashier on July 11, 2008, and last worked for the employer on June 18, 2009. The claimant received the Code of Conduct policy that prohibited employees from playing, purchasing or redeeming lottery tickets while clocked-in.

District Leader Keil received a report from store employees that the claimant and a co-worker purchased lottery tickets while on the clock on June 13, 2009. Keil reported to the store and began an investigation by questioning on-duty employees and the claimant. Keil reviewed a store video that showed the claimant and the co-worker during a 6:00 p.m. to 8:00 p.m. time frame, and Keil believed that claimant was involved in the purchase of a lottery ticket. The claimant was placed on suspension and then discharged on June 18 for violation of the Code of Conduct policy for purchasing a lottery ticket. Although the claimant had received a prior warning about a safety issue, the discharged was based on the lottery policy violation. The co-worker was discharge for the same reason as the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 18, 2009.

The claimant denied that she had anything to do with her co-worker's purchasing a lottery ticket on June 13 other than to talk about it with her. The employer contends that claimant admitted she purchased half the cost of the ticket, but it offered no written statement by the claimant to this admission or other corroborating evidence that the claimant somehow violated the lottery policy.

**DECISION:**

The department decision dated August 5, 2009, reference 04, is affirmed. The claimant was not discharged for misconduct on June 18, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs