

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT D VANDERWERF
Claimant

APPEAL NO. 11A-UI-08716-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 05-29-11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 22, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 25, 2011. The claimant did participate and was represented by Erin Lyons, Attorney at Law. The employer did participate through Dave Wolter, District Leader. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a store leader full time beginning May 13, 1996 through June 1, 2011 when he was discharged. The claimant was responsible for reviewing employees' performance during what were called booth notes. The claimant was required to enter a small booth from a door outside the store so that the employees would not know they were being observed. As the manager he would then make notes on the employee's performance, either things that needed improvement or things that the employees were doing well. After filling out the booth notes form, the claimant then was required to discuss what he had observed with the employees and then have the employees sign off on the form that the claimant had discussed all of the issues with them. During regularly quarterly periods another management employee would review the booth notes to make sure they were done and done correctly. During the June 1 inventory the employee reviewing the booth notes noticed that all of the employee's signatures looked the same. She brought the irregularity to Mr. Wolter's attention and he asked the claimant about the booth notes. On June 1 and at the hearing the claimant admitted that he had falsified all eight of the booth notes he had turned in. He had not conducted any booth review nor had he watched any surveillance video and he had forged eight different employee's names. The claimant had in the past demonstrated an ability to correctly perform booth notes reviews. He estimated he had done so properly on some seventy-five occasions. The claimant would not have been discharged for failing to have his booth notes reviews done, but would have been counseled on his performance. The employer's handbook, a copy of which had been given to

the claimant clearly puts employees on notice that acts of dishonesty and falsification of company records can lead to immediate discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee owes their employer honesty in their dealing with them. The claimant was dishonest in that he not only falsified the booth notes but he forged eight employee's signatures. Even though the claimant admitted his dishonesty to the employer, he was obligated not to be dishonest in the first place. The claimant knew or should have known that such an act of dishonesty could lead to his discharge. Choosing to engage in dishonesty because an employee does not think they will be fired if they are caught is not an excuse. An employee is not allowed a onetime exemption from honest dealings. The claimant's act of falsification and forgery was severe enough to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The June 22, 2011 (reference 01) decision is affirmed. The 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css