

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMONE M WILLIAMS
Claimant

APPEAL NO. 10A-UI-07372-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 04-18-10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 12, 2010. The claimant did participate and was represented by Hattie Homes, Paralegal supervising law student Brett Lechtenberg. The employer did participate through Kimberly Keil, District Leader. Employer's Exhibit One 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 retail sales clerk, part-time, beginning February 16, 2009, through April 23, 2010, when he was discharged. Through review of the surveillance tapes on March 27, the employer discovered that on March 21, 25, and 27, 2010, the claimant gave away products to a person who did not pay for all of the merchandise. The employer reviewed the surveillance footage and personally observed the claimant not charging the customer for all of the products. The claimant had received the employer's policy regarding charging customers, including coworkers, for all of the products they were purchasing. The claimant was charged with theft and prosecuted. His theft charge was dismissed.

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.

The mere fact that the claimant was acquitted of criminal charges does not mean he is automatically entitled to unemployment benefits. The burden of proof for criminal charges is beyond a reasonable doubt. Here, the employer's burden of proof is only a preponderance of the evidence. Ms. Keil watched the surveillance tapes and viewed the customer transaction receipts and saw the claimant violate the employer's policy by giving away product to a customer. The administrative law judge is persuaded that the claimant engaged in theft from the employer by failing to charge the customer for all of the products she took from the store. Theft is sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The May 19, 2010, reference 02, 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/kjw