

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOY A CALVERT**  
Claimant

**APPEAL NO: 12A-UI-13984-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 10/14/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated November 15, 2012, reference 01, that held she was discharged for misconduct on October 16, 2012, and benefits are denied. A telephone hearing was held on December 24, 2012. The claimant participated. Bambi Blaess, Store Leader, participated for the employer. Employer Exhibit One was received as evidence.

**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 on July 13, 2002, and last worked for the employer as a part-time HP café employee on October 16, 2012. Claimant was a third shift employee who usually worked from about 10:00 p.m. to the early morning hours the next day.

One of claimant's job duties was to take hourly soup temperatures and record them on a log record. The employer issued claimant a written warning on April 12, 2012 for failing to do so on her March 29/30 work shift. If claimant is unable to take/record an hourly temperature she was instructed to cross off the hour on the log record. The warning states a further incident could lead to disciplinary action up to and including termination. Claimant attended a store meeting on October 7 where the store leader emphasized the soup/food temperature requirement and the consequence for failing to do so.

The kitchen manager found the soup log located in an unusual place that caused the employer to look at a video camera that surveyed the area where the soup kettles was located. The video showed claimant took only two soup temperatures on her October 2/3 work-shift (1:50 a.m.; 4:12 a.m.) but she recorded several additional temperatures on the log that she had not taken. The employer's October 10/11 work-shift video showed claimant took only one soup temperature at 4:13 a.m. while she recorded several additional ones she had not taken.

The employer confronted claimant with the video evidence on October 16 and she admitted she recorded soup temperatures on the log that she had not taken. She said she was busy and did not have time to do it. Since the April warning involved a failure to take temperatures she thought she was between a rock and a hard place on this issue.

The employer terminated claimant for employee falsification of records in light of the prior written warning and verbal warning during a recent store meeting. The employer believed this was more of an employee dishonesty issue and violation of a safe food practice than just a failure to perform a work task.

### **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 established claimant was discharged for misconduct in connection with employment on October 16, 2012 for falsification of a work record.

Although the April 2012 warning had to do with a failure to perform the work task of taking hourly food/soup temperatures, the employer let it be known that it was enforcing its policy. This point was emphasized to claimant and other employees during the store meeting on October 7.

The claimant deliberately made false soup temperature entries on the employer log record for October 2/3 and October 10/11 that do constitute employee dishonesty and job disqualifying misconduct. Claimant was attempting to hide her failure to perform a work duty for which she had been disciplined by compounding the initial infraction of the store policy with a more onerous violation.

**DECISION:**

The department decision dated November 15, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on October 16, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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