

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY D JAYNE
Claimant

APPEAL NO. 10A-UI-04594-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

OC: 02/21/10
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated March 15, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits based upon his separation from Kwik Shop Inc. After due notice, a telephone hearing was scheduled for and held on May 10, 2010. Although notified, the claimant did not participate. The employer participated by Tiffany Right, Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, administrative law judge finds: Jeremy Jayne was employed by Kwik Shop Inc. from July 19, 2009 until February 16, 2010 when he was discharged for repeated violation of company policy. Mr. Jayne worked as a full-time clerk and was paid by the hour. His immediate supervisor was Tiffany Right.

The claimant was discharged after he left the Kwik Shop facility unlocked and unattended at approximately 2:30 a.m. on February 16, 2010. While the store was unattended an unidentified individual stole numerous lottery scratch tickets. The individual appears to have waited until Mr. Jayne had left the store unattended to return and commit the theft.

Mr. Jayne had been specifically warned on December 9, 2009 for leaving the company's sales area unattended. Mr. Jayne was specifically warned at that time that the next incident would result in suspension or termination from employment.

Employees are expected to perform outside duties at times when additional cashiers or management individuals are present to insure that the facility is not left unlocked and unattended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions.

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 evidence in the record establishes that Mr. Jayne had been specifically warned for the same or similar offense less than two months prior to his discharge. Mr. Jayne once again left the facility unattended for an extended period and in an unlocked condition. Leaving the facility unlocked and unattended allowed another individual to use or misappropriate a substantial number of lottery scratch-off tickets. The claimant was aware that violating the company rule in the future could result in his termination. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 15, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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