

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AMY J HOFFMAN
511 GREENBRIER RD
WATERLOO IA 50703**

**KWIK TRIP INC
1626 OAK ST
PO BOX 2107
LACROSSE WI 54602**

**Appeal Number: 04A-UI-03087-AT
OC: 02-08-04 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Amy J. Hoffman filed an appeal from an unemployment insurance decision dated March 8, 2004, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held April 26, 2004 with Ms. Hoffman participating. District Leader Kim Keil participated for the employer, Kwik Trip, Inc. Exhibit D-1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amy J. Hoffman was employed by Kwik Trip, Inc.

from June 28, 2000 until she was discharged February 11, 2004. She last worked full-time as a shift leader. Shortly before the date of discharge Ms. Hoffman accepted eight \$3.00 coupons for the purchase of two cartons of cigarettes. Ms. Hoffman's store manager had specifically authorized the employees of the store to do so. He himself did so as well. When District Leader Kim Keil learned of this, all employees of the store, including the manager, were discharged.

The decision from which Ms. Hoffman has appealed states that it would become final unless an appeal was postmarked by March 18, 2004 or received by the Agency by that date. Ms. Hoffman first learned of the existence of the decision on March 19, 2004. She filed her appeal on the same day.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. It can.

Iowa Code Section 96.6-2 gives an individual only ten days from the date of a fact-finding decision to file an appeal. The Supreme Court of Iowa, however, has allowed additional time for an appeal when an appellant has not received the adverse decision or learned of its existence until after the end of the appeal period. Under those circumstances, the question becomes whether the individual filed the appeal within a reasonable amount of time. See Eves v. Iowa Employment Security Commission, 211 N.W.2d 324 (Iowa 1973). The evidence in this case establishes that Ms. Hoffman learned of the adverse decision on March 19, 2004, the day after the expiration of the appeal period, and filed her appeal on the same day. Under these circumstances, the appeal must be accepted as timely.

The remaining question is whether the evidence establishes that Ms. Hoffman was discharged for misconduct in connection with her work. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While the evidence establishes that Ms. Hoffman violated written company policy by allowing multiple coupons for the purchase of an item, it also establishes that her direct supervisor specifically authorized the practice and engaged in it himself. Where written policy is contradicted by practice and specific instruction, it is not possible to say that a claimant has deliberately engaged in action known to be contrary to the employer's interest. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 8, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

tjc/b