

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

CHERI M GRIES
510 NORTHWESTERN
AMES IA 50010

KWIK SHOP INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006 9000

Appeal Number: 05A-UI-04335-DWT
OC: 03/20/05 R: 02
Claimant: Respondent (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 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kwik Shop, Inc. (employer) appealed a representative's April 12, 2005 decision (reference 01) that concluded Cheri M. Gries (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Michelle Stovall, a representative with Employers Unity, Inc., appeared on the employer's behalf. Steve Uthe, the district advisor, testified on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2004. The claimant worked as a full-time cashier. The claimant received copies of the employer's tobacco policy. The employer's policy requires employees to ask for identification of any customer under the age of 27 who attempts to buy tobacco products. If an employee sells tobacco to a minor, the employer will discharge the employee.

On March 16, 2005, local law enforcement officials performed a compliance check at the employer's store. An underage female purchased a tobacco product. Even though the claimant looked at this person's identification, the claimant sold cigarettes to a minor. The minor's license indicated in red that the person was born in 1988 and was a minor.

The claimant reported to the employer that same day that she had been cited for a tobacco violation. The claimant indicated the minor had shown her a deceptive identification. When the employer checked with the local law enforcement officials, the employer learned the minor's identification was not deceptive. The employer discharged the claimant on March 16, 2005, for violating the employer's policy and Iowa law that prohibits selling tobacco products to minors.

The claimant established a claim for unemployment insurance benefits during the week of March 20, 2005. The claimant filed claims for the weeks ending March 26 through May 7, 2005. She received her maximum weekly benefit amount of \$240.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known it was illegal to sell tobacco products to a minor. The facts indicate the minor's identification clearly showed she was a minor. Without any explanation from the claimant as to why she sold tobacco to a minor, a preponderance of the evidence shows the claimant committed work-connected misconduct by selling tobacco to a minor on March 16, 2005. Even though this may have been the first time the claimant did this, it is illegal to sell tobacco to a minor. One of the claimant's responsibilities as a cashier is to

make sure she follows all the applicable laws. The claimant is disqualified from receiving unemployment insurance benefits as of March 20, 2005.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending March 26 through May 7, 2005. The claimant has been overpaid a total of \$1,680.00 in benefits she received for these weeks.

DECISION:

The representative's April 12, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 20, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending March 26 through May 7, 2005. The claimant has been overpaid and must repay \$1,680.00 in benefits she received for these weeks.

dlw/sc