

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AUSTIN M HEMENWAY**  
Claimant

**APPEAL NO. 13A-UI-12344-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 10/06/13  
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge  
Section 96.5-2-a – Requalification

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 31, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 26, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Kimberly Keil participated in the hearing on behalf of the employer. Exhibits One through Three were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show Jensen Dairy Queen paid the claimant \$2,297.00 in wages during the 2nd Quarter 2013 and \$2,705.96 in wages for the 3rd Quarter 2013 before filing his claim effective October 6, 2013. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?  
Has the claimant requalified since his separation from the employer?

**FINDINGS OF FACT:**

The claimant worked part time for the employer as a retail coworker from January 2, 2013, to April 24, 2013. He was informed and understood that under the employer's work rules, he was subject to disciplinary action up to discharge for violation of state or federal law.

The claimant was charged on April 9, 2013, and was convicted on April 19, 2013, of theft in the fifth degree after he was arrested at Walmart for shoplifting along with two men he was with at Walmart. He pleaded guilty to the theft charge to get it over and done with.

After the employer found out about his conviction, the claimant was discharged on April 24, 2013, for violation of the work rule prohibiting employees from violating state law.

The claimant worked for Jensen Dairy Queen after his employment with the employer ended. Jensen Dairy Queen paid the claimant \$2,297.00 in wages during the 2nd Quarter 2013 and

\$2,705.96 in wages for the 3rd Quarter 2013 before filing his claim effective October 6, 2013. His weekly benefit amount was determined to be \$156.00. Jensen Dairy Queen did not protest the claim.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The evidence establishes that the claimant was discharged for misconduct due to his violation of the employer's work rules. He claims that he had no knowledge that the men he was with were shoplifting but his guilty plea and conviction undercut that.

The nature of an unemployment insurance disqualification is that a claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to 10 times his weekly benefit amount, provided he is otherwise eligible. The claimant has satisfied the 10-times requalification and any disqualification should be lifted.

**DECISION:**

The unemployment insurance decision dated October 31, 2013, reference 01, is modified in favor of the employer. The claimant was discharged for misconduct, but he has requalified. The employer's account will in the future be exempt from charge.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs