

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**IESHA A TENSLEY**  
Claimant

**APPEAL NO. 13A-UI-13793-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 11/17/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 1, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 9, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Jaime Lopez participated in the hearing on behalf of the employer with a witness, Misty Hoskinson.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time for the employer as a store clerk from June 2013 to October 8, 2013.

On September 20, 2013, the claimant's boyfriend was near the checkout counter where the claimant was standing. He took a USB charger and cell phone screen protector in front of the claimant and put the items in his pocket without paying for it. The claimant also rang up her boyfriend's purchase of Swisher cigarillos and allowed him to take the product without paying the full price.

A meeting was scheduled for October 8, 2013, with the claimant and supervisors with the employer. The store manager, Misty Hoskinson, had reviewed surveillance video from the claimant's shift and had discovered that on September 20, 2013, the claimant had uncharged her boyfriend and had allowed him to take merchandise from the store without paying for it.

The claimant met with the Hoskinson, loss prevention manager Barry Rauch, and human resources manager Jaime Lopez. During the meeting, the claimant denied allowing her boyfriend to take the merchandise without paying for it and claimed she did not see him do so. She admitted, however, to consuming food in the store without paying for it and ended up estimating the amount taken at \$40's worth. She was allowed to resign in lieu of being discharged.

The employer has filed theft charges against the claimant but the charges are pending and have not been resolved.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. When someone resigns in lieu of being discharged it not considered a voluntary quit. 871 IAC 24.26(21). Instead, the separation is treated as a discharge and the issue of misconduct is decided.

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

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I find the testimony of Hoskinson and Lopez more credible than the claimant's on whether the claimant allowed her boyfriend to take merchandise from the store without paying for it. The claimant admitted to taking food without paying for it, which demonstrates dishonesty and undercuts her claim that her boyfriend stole items without her knowledge.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The parties should be aware that a claimant who loses their employment due to conduct amounting to an indictable offense is subject to a more serious disqualification for gross misconduct. Iowa Code § 96.5-2-b. The law requires, however, that a claimant be convicted of the offense or admit in writing to the offense.

**DECISION:**

The unemployment insurance decision dated December 1, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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