

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JENNIFER SPURGEON
Claimant

APPEAL NO. 18A-UI-07167-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 06/03/18
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Jennifer Spurgeon filed a timely appeal from the June 25, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Spurgoen was discharged on June 7, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on July 20, 2018. Ms. Spurgeon participated. Jeremy Clemens represented the employer. Exhibit A and Department Exhibits D-1 through D-7 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Spurgeon was employed by Kwik Trip, Inc. as a Guest Service Coworker (clerk/cashier) from June 2017 until June 8, 2018, when Jeremy Clemens, Store Leader, Chad LaCour, District Leader, and Emily Speropulos, Human Resources representative, discharged her from the employment for violating the employer's Loss Prevention Policy on May 30, 2018. During her shift on May 30, Ms. Spurgeon made herself a shake at 10:30 p.m. Though Ms. Spurgeon knew the employer's policy required that she pay for merchandise prior to consuming it, Ms. Spurgeon did not pay for her shake prior to consuming the shake. Later in the shift, at 1:27 a.m. on May 31, Ms. Spurgeon, on her own volition, paid for the shake at the same time she paid for other merchandise she had not yet consumed. Ms. Spurgeon had another employee ring up the sale pursuant to company policy. On June 6, 2018, Mr. Clemens was reviewing video surveillance from May 30-31 in connection with an unrelated matter and observed Ms. Spurgeon's violation of the Loss Prevention Policy. On June 6, Mr. Clemens suspended Ms. Spurgeon from her employment. The discharge followed two days later.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes a policy violation, but does not establish an intent to steal from the employer. Ms. Spurgeon made an error in judgment on May 30, 2018, when she consumed the shake without first paying for it. However, later in the shift, Ms. Spurgeon, on her own volition, paid for the shake. Ms. Spurgeon's conduct, considering the totality of the circumstances, did not demonstrate a willful and wanton disregard of the employer's interests and did not constitute disqualifying misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Spurgeon was discharged for no disqualifying reason. Accordingly, Ms. Spurgeon is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 25, 2018, reference 01, decision is reversed. The claimant was discharged on June 8, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs