

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY R SCHMIDT
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-03191-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/08/20
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Schmidt (claimant) appealed a representative's April 7, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Kwik Trip (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 12, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue includes whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 14, 2019, as a full-time fuel transport driver. He received the employer's handbook when he was hired. Twice the employer talked to the claimant about seeing the claimant with his cellphone in his hand while driving. The employer warned the claimant he could lose a bonus or be suspended for a day if it happened again.

The claimant worked as a fuel transport driver for sixteen years at other companies before being hired by the employer. With those companies, he used an opposite motion to lock and connect the fitting when unloading fuel. He knew he had to be careful with the motion. On March 5, 2020, the claimant made the old motion and did not lock the fitting. About two-hundred gallons of diesel was released.

The claimant and another employee worked to clean the spill. An officer from the Department of Natural Resources inspected the site. There was no danger to the public or the environment. The employer hired a firm to scrub the area. The employer suspended the claimant on March 5,

2020. On March 6, 2020, the claimant's direct supervisor told the claimant he thought his job was safe. On March 9, 2020, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of March 8, 2020. His weekly benefit amount was determined to be \$500.00. The claimant has filed weekly claims but received no unemployment insurance benefits after his separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

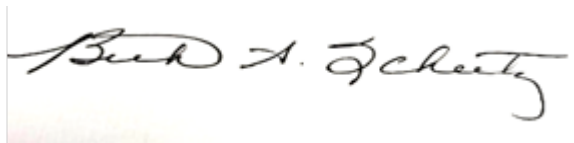
Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. He did not follow instructions regarding his cellphone. With regard to the final incident, he did not

pay attention to the task and make the proper connection. He failed to protect the employer's assets. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The representative's April 7, 2020, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

May 14, 2020
Decision Dated and Mailed

bas/scn