

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERI RIEDLINGER
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-03158-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Keri Riedlinger (claimant) appealed a representative's April 6, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Kwik Trip (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 7, 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 is whether the claimant was separated from employment for any disqualifying reason and whether the claimant was overpaid unemployment insurance benefits.

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 in 2018, and at the end of her employment she was working as a full-time guest co-worker. She received the employer's handbook when she was hired. The employer did not issue her any warnings in 2018 and 2019.

The claimant took care of the "hot spot", the area of the store where hot food is available to customers. She also took care of the cash register and other duties. When she arrived at work, she regularly found expired food. In early February 2020, the store manager suspended the claimant for performance issues. The claimant was doing the best she could while the store was short-staffed. The store manager promised to send her to training on chicken handling. The other employees had all been sent to training.

On February 11, 2020, the employer issued the claimant a sixty-day performance review. The claimant had until April 11, 2020, to improve her performance. On March 5, 2020, the employer terminated the claimant for performance issues. The employer did not provide dates of the performance issues.

The claimant filed for unemployment insurance benefits with an effective date of March 8, 2020, and received no unemployment insurance benefits or federal pandemic unemployment compensation after her separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

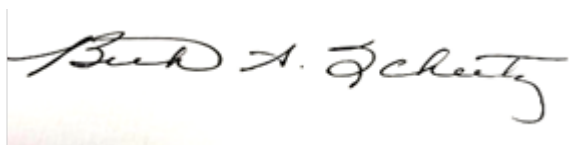
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof.

The employer must show a final incident of poor performance and the evidence of intent. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct or intent. The employer did not provide any dates when any of the alleged incidents occurred. The claimant's performance was a result of her lack of training and over assignment of duties. Consequently, the employer did not meet its burden of proof to show a final incident of misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant received no unemployment insurance benefits or federal pandemic unemployment compensation after her separation from employment.

DECISION:

The representative's April 6, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

May 12, 2020
Decision Dated and Mailed

bas/scn