

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARILYN E BETTS  
1211 W PARKER ST  
WATERLOO IA 50703

KWIK TRIP INC  
1626 OAK ST  
PO BOX 2107  
LACROSSE WI 54602

Appeal Number: 04A-UI-09388-DWT  
OC: 08/01/04 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2 - Discharge

STATEMENT OF THE CASE:

Kwik Trip, Inc. (employer) appealed a representative's August 23, 2004 decision (reference 01) that concluded Marilyn E. Betts (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 22, 2004. The claimant participated in the hearing. Kim Keil, a district leader, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 26, 2004. The claimant worked as a full-time cashier. Tammy Meier, the store leader, was the claimant's immediate supervisor. The employer requires employees to ask all customers who appear to be under 30 for an ID before selling any tobacco or alcohol product to the customer. When the employee knows the customer and knows the customer is over 30, the employer does not require the employee to request an ID from the customer.

On February 24, 2004, the claimant received a written warning and was suspended for failing to ask a minor for an ID before selling a restricted product to the minor. On April 27, the claimant again failed to ask a customer for ID before she sold the customer a restricted product. The employer again warned the claimant and told her that if she did not follow the employer's tobacco and alcohol policy she would be discharged the next time an incident of this nature occurred.

During her employment, the employer received complaints that the claimant was rude to customers. The employer talked to the claimant about treating customers in a friendly and courteous manner. The employer wanted the claimant to make customers feel welcome by saying "Hi," to customers when they came into the store or went to the cash register to pay for merchandise.

On July 28, Keil observed the claimant at work for about two hours, but the claimant did not know she was being observed. While Keil made her observations, the claimant failed to ask a customer under 30 for an ID, did not say hello to a majority of the customers who walked by the claimant and called a woman a "bitch" when describing how this female interacted while she talked about an earlier incident at the store with a co-worker and a regular customer.

Keil did not realize the claimant had not asked the customer for an ID because the claimant knew the customer was 30 years or older and that even though she did not say hello to a majority of the customers, she made other comments to customers in an attempt to make them feel welcome at the store. The claimant admits she made the reported comment about a female, but the comment was made in the presence of people the claimant knew.

On July 29, 2004, the employer discharged the claimant for again failing to ask a customer who appeared younger than 30 years old for identification before allowing the customer to purchase tobacco or alcohol, for failing to make all customers feel welcome by saying hello to customers, and for the use of profanity or inappropriate language at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment

compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Based on the employer's observations on July 28, the employer concluded the claimant again failed to follow the employer's tobacco and alcohol policy about requesting an ID for any customer who appeared under 30 when the customer wanted to buy a restricted product. The claimant did ask to see a customer's ID who appeared under 30 because she knew the customer or knew the customer was over 30 because she previously asked to see the customer's ID. The employer's policy indicates that if an employee knows a customer is not under 30, the employee does not have to request ID from that customer. The claimant did not violate the employer's tobacco and alcohol policy on July 28.

The employer also discharged the claimant because she did not say hello to a majority of the customers who were in the employer's store. Even though Keil told the claimant to say hello to all customers, the claimant did not do this. Instead, she tried to find other comments to say to customers to make them feel comfortable while at the employer's business. The claimant's failure to say hello to every customer or even a majority of the customers amounts to unsatisfactory job performance. The facts do not establish that any customer recently complained that the claimant was rude or unfriendly. Therefore, the evidence does not show that the claimant substantially disregarded the employer's interests if she made comments other than hello, which made the customer feel comfortable and respected at the employer's business.

When the claimant talked about a recent incident involving a female and her vehicle, the claimant made "frank" comments among people she considered friends. The claimant's choice of words spoken during a discussion between a co-worker, a regular customer and her was not appropriate in a public setting. The evidence, however, does not establish that the claimant intentionally or even substantially disregarded the employer's interests based on this conversation. Instead, the claimant used poor judgment when she used the descriptive words she spoke during this conversation.

As a relatively new employee, the employer was not satisfied with the way in which the claimant interacted with the public. Based on the previous problems the employer had addressed with the claimant, the employer had business reasons for discharging the claimant. The July 28 incident for which the claimant was discharged does not amount to work-connected misconduct. Therefore, as of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 23, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b