

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M SCHMITT**  
Claimant

**APPEAL NO. 13A-UI-06319-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 04/21/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Dawn Schmitt filed a timely appeal from the May 20, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 3, 2013. Ms. Schmitt participated and was represented by Julia Batcheller. Joe Stortz represented the employer and presented additional testimony through Amber McFarland. Exhibits 1 through 12 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: Dawn Schmitt was employed by Kwik Trip, Inc. as a “Guest Service Coworker,” a clerk, from 2008 until July 13, 2012, when the employer discharged her for repeated use of Easy-Off oven cleaning on the employer’s specialized Turbo oven. The employer stocked a special cleaner specific to the high temperature Turbo oven. The use of Easy-Off presented a health risk to staff and customers because it was not designed for the high temperature oven the employer had at its facility. Ms. Schmitt had been instructed to use the designated Turbo cleaner. The employer learned on June 26, 2012 that Ms. Schmitt had taken Easy-Off oven cleaner off the retail shelf and had used that repeatedly, in violation of the employer’s established policies and procedures, to clean the employer’s specialized oven. A manager reprimanded Ms. Schmitt and directed her not to use Easy-Off again to clean the employer’s specialized oven. On July 12, 2012, Ms. Schmitt again used Easy-Off to clean the employer’s oven. The employer discharged her the next day for insubordination.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

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) alone. 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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes that Ms. Schmitt repeatedly and intentionally violated the employer's established procedure for cleaning the employer's specialized, high temperature oven. The employer stocked the appropriate cleaning product. Ms. Schmitt intentionally used an unauthorized cleaning product twice before the employer learned of her actions. At that time, the employer directly instructed Ms. Schmitt not to use the unauthorized product again. Despite that reasonable directive, Ms. Schmitt once again used the unauthorized product. Ms. Schmitt did not have a reasonable basis for using the unauthorized product in violation of the employer's directive.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Schmitt was discharged for misconduct. Accordingly, Ms. Schmitt is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Schmitt.

**DECISION:**

The Agency representative's May 20, 2013, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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