

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

DEBRA S MORRISON
APT 407
1000 S ILLINOIS AVE
MASON CITY IA 50401

KWIK TRIP INC
PO BOX 2107
LACROSSE WI 54602

Appeal Number: 05A-UI-04657-DWT
OC: 01/02/05 R: 02
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, 4th 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 is 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-a - Discharge

STATEMENT OF THE CASE:

Kwik Trip, Inc. (employer) appealed a representative's April 28, 2005 decision (reference 03) that concluded Debra S. Morrison (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 May 23, 2005. The claimant participated in the hearing. Crystal Fisher, the store 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 21, 2005. The employer hired the claimant to work as a part-time cashier. The claimant was considered a 90-day probationary employee.

Although the employer's policy informs employees they are not to purchase or play lottery tickets while working, the manager allows employees to purchase lottery tickets at the end of a shift. During the course of her employment, the claimant purchased lottery tickets during her shift a couple of times and asked a customer to buy lottery tickets for her at least once.

On March 14, 2005, the claimant bought a six-pack of beer but forgot it when she was done with her shift and went home. On March 18, 2005, the claimant bought cigarettes and wine. Before she went home she remembered she had previously purchased a six-pack of beer and took that home as well.

The employer had problems with the cigarettes missing. Fisher reviewed the March 18, 2005 surveillance tape on March 20 to see if she could see anything that might explain the cigarette inventory discrepancy. While watching the surveillance tape, she saw the claimant take home some merchandise. Fisher checked the electronic journal, which verified the claimant paid for the wine and cigarettes, but not the beer. On March 20, 2005, Fisher also found a receipt indicating the claimant purchased lottery tickets during her shift instead of at the end of her shift. The employer decided to discharge the claimant on March 21, 2005.

The next time the claimant reported to work, March 25, the employer discharged her. The employer told the claimant she was discharged for taking the six-pack of beer without paying for it. The claimant denied that she had not paid for the beer.

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).

When the employer discharged the claimant, the only electronic journal the employer reviewed was for March 18, 2005. The claimant admitted she did not pay for the beer on March 18. The employer did not ask her when she would have paid for it even though the claimant told the employer on March 25 she had paid for the beer. Since the claimant paid for cigarettes and wine on March 18, it does not make sense that she would not pay for the beer also if she had not already done so. A preponderance of the evidence does not establish that the claimant removed beer from the employer's without first paying for it.

The claimant should have left a note or contacted the employer on March 18 that she had already paid for beer she took home that night. The claimant's failure to do this at most amounts to an error in judgment and does not rise to the level of work-connected misconduct.

Although the employer's policy indicates employee are not allowed to purchase lottery tickets while working, management allows employees to purchase lottery tickets at the end of the shift. The claimant understood she could purchase tickets as long as no customers were in the store. Since the employer has modified the employer's lottery ticket policy and the claimant did not understand the policy, the couple of times the claimant purchased a lottery ticket while at work does not constitute work-connected misconduct.

The employer established business reasons for discharging a probationary employee. As a result of the beer incident, the employer did not trust the claimant and made the decision to discharge her. The evidence does not show that the claimant intentionally or substantially disregarded the standard of behavior the employer has a right to expect from an employee. The facts do not establish that the claimant committed work-committed misconduct.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's April 28, 2005 decision (reference 03) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/s