

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONNIE K GALLOWAY**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL NO: 100-UI-07732-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/17/10  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 11, 2010, reference 01, that held the claimant was not discharged for a current act of misconduct on January 20, 2010, and benefits are allowed. A telephone hearing was held on August 23, 2010. The claimant participated. Kimberly Keil, District Leader, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on November 3, 2005, and last worked as a full-time assistant store leader on January 20, 2010. The claimant received a disciplinary warning on February 12, 2009.

On December 31, 2009 the claimant posted a note for her store leader (Joanne Good) on a bulletin board in the back room about an issue involving an un-named employee. The note was seen by Joanne the following day, and it was discussed by during a management meeting with the claimant on January 11. The employer discharged the claimant on January 20, 2010 for unprofessional conduct in posting the note in light of prior discipline.

**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(8) provides:

(8) Past acts of misconduct. 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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on January 20, 2010.

The employer waited three weeks to discharge the claimant that makes the most recent incident to not be a current act that is required by the law. The time lapse supports an inference that the most recent incident was not so serious as to merit an immediate termination.

**DECISION:**

The department decision dated February 11, 2010, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on January 20, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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