

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

CHARLES B LEWIS  
1143 – 29<sup>TH</sup> ST  
MOLINE IL 61265-2354

KWIK SHOP INC  
c/o TALX – EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 06A-UI-06273-DW  
OC: 05/21/06 R: 04  
Claimant: Appellant (2)

**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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Charles B. Lewis (claimant) appealed a representative's June 8, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Kwik Shop, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 16, 2006, in Davenport, Iowa. The claimant participated in the hearing. No one on the employer's behalf appeared for the hearing. Based on the evidence, the arguments of the claimant 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 in December 2000. The claimant worked as a full-time retail cashier. The claimant knew the employer did not allow employees to sell cigarettes to minors. The claimant understood an employee would either be discharged or receive additional training if an employee sold tobacco products to a minor.

About five years ago, the claimant inadvertently sold tobacco products to a minor. At that time, he received a verbal warning and a small fine. In late April 2006, the Moline police department operated a "Sting" operation. A part of this operation included a minor going to the employer's store to purchase cigarettes. The claimant waited on this minor and looked at his driver's license. Even though the claimant looked at the minor's driver's license, he miscalculated the minor's age, concluded the person was old enough to buy cigarettes and sold cigarettes to the minor. After the police confronted the claimant about this transaction, he immediately contacted the employer.

The store manager told the claimant to be more careful when he checked driver's licenses, but the incident would have to be reported to upper-level management. Recently, the employer had been short-handed and the claimant and other employees worked double shifts. The day of the incident, the claimant finished a third-shift at 4:30 a.m. and reported back to work at 2:00 p.m. The claimant was tired. The transaction with the minor occurred at 4:45 p.m.

Even though the claimant's job was not in jeopardy prior to this incident, the employer's corporate office decided to discharge the claimant for selling cigarettes to a minor in late April.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 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).

The employer had compelling business reasons for discharging the claimant. The facts establish the claimant knew he could not sell tobacco products to minors. In late April 2006, the

evidence indicates the claimant was negligent when he did not calculate the minor's birthday correctly. This isolated incident in five years does not rise to the level of work-connected misconduct. The claimant did not intentionally fail to follow the employer's tobacco policy. Therefore, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 8, 2006 decision (reference 02) is reversed. The employer discharged the claimant for a compelling business reason that does not constitute work-connected misconduct. As of May 21, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs