

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERIN L EASTERDAY**  
Claimant

**APPEAL NO: 13A-UI-09561-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 07/14/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(9) – Disciplinary Suspension

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 13, 2013, reference 01, that held he was placed on disciplinary suspension on July 2, 2013, and benefits are denied. A telephone hearing was held on September 24, 2013. The claimant participated. Jaime Lopez, HR Director, and Jeremy Glass, participated for the employer.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on August 30, 2009, and last worked for the employer as a full-time manager on June 25, 2013. Claimant's attorney called the employer HR director about claimant's employment status in light of a criminal theft charge against her. The employer learned claimant had been charged with theft of money from her mother.

The HR director conferred with its legal department about what it should do. The department advised claimant should be put on unpaid administrative leave pending a disposition of the criminal theft charge. It concluded it could not trust claimant with handling employer money due to the nature of the criminal charge. The employer notified claimant of the unpaid leave on June 25.

Claimant states she is accused of felony theft of \$8,000.00 from her mother. There has been no disposition of the criminal charge as of the date of this hearing. The employer continues claimant's employment status on unpaid administrative leave as of the date of this hearing.

**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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The administrative law judge concludes employer established claimant was suspended for misconduct on June 25, 2013 for an issue of employee trustworthiness that is in connection with employment.

The employer imposed unpaid administrative leave is comparable to a disciplinary suspension. While the claimant alleged theft is not directly involved as to any funds of the employer the criminal charge is employment related (in connection with employment) as it relates to employee trust and handling employer funds. As assistant manager, the claimant is required to handle employer funds and customer money transactions. The felony criminal charge against claimant for stealing from her mother puts at serious issue whether the employer can trust claimant at the workplace. Disqualifying disciplinary suspension misconduct is established.

**DECISION:**

The department decision dated August 13, 2013, reference 01, is affirmed. The claimant was suspended for misconduct on June 25, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, 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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