

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON T TAYLOR
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-07432-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Brandon Taylor, filed an appeal from the March 12, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first telephone hearing was held on May 21, 2021. The claimant participated. The employer, Kwik Trip Inc., participated through Maurice Jackson. The hearing was continued before any testimony was taken to allow claimant receipt of employer’s proposed exhibits.

After proper notice, a second telephone hearing was conducted on June 22, 2021. Claimant participated. The administrative law judge made three attempts to contact Mr. Jackson for the hearing but received no answer. Employer did not participate but its exhibits were admitted as Employer Exhibit 1 in lieu of participation.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a clerk and was separated from employment on January 29, 2021, when he was discharged for alleged loss prevention policies.

When claimant was hired, he was trained on employer rules and procedures (Employer Exhibit 1). Claimant was aware that employees were not supposed to ring up their own purchases (Employer Exhibit 1). Claimant worked the overnight shift, where he would have 1-2 other

employees working with him. Employer's policy does carve out an exception that an employee may ring up their own purchase if no other employee is available (Employer Exhibit 1).

Claimant stated that he had on occasion rang up his own purchases when no one was working with him or the kitchen employee was too busy and told claimant it would be an hour before he could come out and help. Claimant stated he would follow employer procedure of printing off two receipts, writing "self" on the receipt as the person who rang it up, and left a receipt for employer books/bookkeeping. Claimant did not conceal any purchases or intentionally violate policy. He was subsequently discharged.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Ringing up a sale to oneself is not "substantial" misconduct justifying disqualification even when in violation of a

known company rule. *Burrichter v. Iowa Dep't of Job Serv.*, (No. _____, Iowa Ct. App. filed _____, 1983).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The undisputed evidence presented is claimant was expected to have another employee ring up his transactions to avoid possible issues of impropriety. Claimant knew of this policy and worked the overnight shift, which was minimally managed. Employer also had a policy that did allow employees to ring themselves if no one is available. Claimant credibly testified that when he worked with one other employee who said he could not ring up the claimant for an hour due to being busy in the kitchen, that claimant interpreted that to mean no one was available to ring him up. Good faith belief that claimant's actions were authorized is judged by objective, not subjective, standards. *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988). Claimant acknowledged he had on occasion rung himself up under those circumstances, unaware he would be subject to discharge for it. Claimant did not try to conceal his actions and printed off two receipts as required, which clearly reflected he was the cashier. The employer did not participate in the hearing or refute claimant's credible explanation for his non-compliance with the employer's rule.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated March 12, 2021, (reference 04) is reversed. Claimant was discharged but not for disqualifying misconduct. Accordingly, benefits are allowed



Jennifer L. Beckman
Administrative Law Judge

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July 07, 2021
Decision Dated and Mailed

jlb/ol