

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**MISTY L BARTLETT**  
Claimant

**APPEAL NO. 22A-UI-09076-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 03/13/22  
Claimant: Appellant (2)**

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Iowa Code Section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

On April 11, 2022, Misty Bartlett (claimant) filed a timely appeal from the March 31, 2022 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 16, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 23, 2022. Claimant participated. Kathy Laumer represented the employer. Exhibits A through D were received into evidence.

**ISSUE:**

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Misty Bartlett (claimant) was employed by Kwik Trip/Kwik Star as a part-time Guest Services Coworker (clerk). The claimant began her employment in May 2020 at Store #1032 in Hiawatha. Store Leader (manager) Kathy Laumer was the claimant's immediate supervisor throughout the employment. The claimant generally worked 28 hours or more per week. The claimant worked primarily overnight shifts, but also worked evening shifts.

In November 2020, the claimant inquired with Ms. Laumer about transferring to a store in Des Moines. The claimant's daughter and the daughter's fiancé were planning a move to Des Moines and the claimant desired to accompany them. The claimant and Ms. Laumer discussed the procedure for transfers. The claimant took from that conversation that the claimant needed to contact the Store Leader at the store to which she wanted to transfer to confirm there was an available position, that Ms. Laumer then needed to approve the transfer, and that the Des Moines Store Leader also needed to approve the transfer. However, the claimant's understanding of the transfer request and approval process was incomplete. The District Leaders for the Cedar Rapids and Des Moines areas would also need to approve the transfer.

On or about December 1, 2021, the claimant provided written notice to the employer that she would be leaving her employment at the Hiawatha store effective December 23, 2021. However, after the claimant submitted her written resignation, Ms. Laumer requested and the claimant agreed to continue to perform work at Hiawatha stores beyond December 23, 2021. The employer documented the claimant's last worked shift as occurring on January 16, 2022.

In January 2022, while the claimant was still picking up shifts in the Cedar Rapids area, the claimant contacted the Store Leader of the Kwik Trip located on Northeast 14<sup>th</sup> Street in Des Moines and that person confirmed there was an opening at the Des Moines location.

On January 18, 2022, the claimant contacted Ms. Laumer and provided Ms. Laumer with information from the Des Moines Store Leader regarding the transfer. Ms. Laumer told the claimant, "I'll get on it." Ms. Laumer subsequently became ill for an extended period and did not take further action on the transfer. The claimant made contact with the Des Moines Store Leader, who advised he had not heard from Ms. Laumer regarding the transfer. Toward the end of January 2022, the claimant received an email from the employer in which the employer asserted the claimant had quit effective January 27, 2022. After the claimant had agreed to stay on the employer, the claimant had not given further notice of an intention to separate from the employment and intended instead to transfer to the Des Moines location if and when the transfer was approved by the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

The weight of the evidence establishes the parties mutually agreed to continue the employment beyond the effective quit date the claimant had provided in her resignation memo. In other

words, the parties agreed to disregard the resignation memo. The evidence in the record fails to establish a voluntary quit. Rather, while the claimant continued under the reasonable belief that her transfer was pending and that Ms. Laumer was working on the transfer, the employer elected to deem the employment terminated. Whether one calls the involuntary separation a layoff or discharge, the outcome is the same. A layoff would not disqualify the claimant for unemployment insurance benefits and would not relieve the employer of liability for benefits.

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether

the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record fails to establish misconduct on the part of the claimant that would disqualify the claimant for unemployment insurance benefits. The evidence indicates the employer terminated the employment at a time when the claimant reasonably concluded the employer was working on her transfer request.

The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer’s account may be charged for benefits.

**DECISION:**

The March 31, 2022 (reference 01) decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer’s account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

August 1, 2022  
Decision Dated and Mailed

jet/mh

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> OR by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.