

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

MICHELE KAPLAN  
250 – 11<sup>TH</sup> ST NW  
CEDAR RAPIDS IA 52405

KWIK SHOP INC  
C/O EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 05A-UI-06144-BT  
OC: 05/15/05 R: 03  
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 for Misconduct

STATEMENT OF THE CASE:

Michele Kaplan (claimant) appealed an unemployment insurance decision dated May 31, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Kwik Shop, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2005. The claimant participated in the hearing. The employer participated through Carol Minkler, Store Manager, and Eugenia Kinman, Employer Representative.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assistant manager from December 30, 2003 through May 12, 2005. The employer has a no tolerance policy on the sale of alcohol or tobacco to minors. If employees are found to be selling either alcohol or tobacco to minors, the employer is subject to legal fines and/or losing its license to sell such products.

The employer uses an outside agency to conduct compliance checks on its employees to ensure they do not sell alcohol or tobacco to minors. It's called the BARS program and is part of the initial training before new employees may begin working. Each store is to be tested twice monthly and if an employee follows the required procedures for age verification, a green card will be presented to the employee. If the employee fails to follow required procedures for age verification, a red card will be presented. If an employee receives two red cards, termination will result.

The claimant signed an acknowledgement of the alcohol and compliance policies on December 30, 2003. She was discharged after receiving two red cards. Her first red card was received on April 30, 2005 and her second red card was received on May 12, 2005. The claimant's direct supervisor, Carol Minkler, believes the claimant did nothing wrong and was issued the second red card without cause. Ms. Minkler said the claimant would not lie and the claimant told Ms. Minkler that the person participating in the compliance test provided non-truthful information, which is reportedly not allowed. Ms. Minkler feels the claimant was wrongfully discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged pursuant to employer policy when she twice sold alcohol and tobacco to minors. An outside company performed compliance checks and the claimant received two red cards for her failure to follow required procedures for age verification before selling these products. The claimant was aware of the compliance program and was aware she could be discharged after receiving two red cards. Her discharge under these circumstances would typically be sufficient to result in a disqualification of unemployment insurance benefits; however, Carol Minkler, the claimant's supervisor, essentially testified the claimant did nothing wrong and was wrongfully terminated. Consequently, work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 31, 2005, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/sc