

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MONICA E GALVAN**  
Claimant

**APPEAL NO. 18A-UI-05287-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 04/15/18  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Monica Galvan (claimant) appealed a representative's May 1, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Kwik Trip (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 1, 2018. The claimant participated personally. The employer participated by Cody McKenzie, Store Leader. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on February 14, 2014, as a full-time assistant food service leader. She signed for receipt of the employer's handbook on February 14, 2014. On June 1, 2017, Cody McKenzie was hired as the claimant's supervisor. The claimant worked without incident until July 26, 2017.

On July 26, 2017, the employer issued the claimant a written warning for performance issues, unprofessional behavior, and failing to complete all the duties of her entire shift after being granted time to leave early. The employer notified the claimant that further infractions could result in termination from employment. On November 30, 2017, the employer gave the claimant her annual appraisal. This was the first evaluation in which the claimant ranked below average. The employer placed the claimant on a 120-day plan. She would be re-evaluated on March 28, 2018.

On January 9, 2018, the employer issued the claimant a written warning for unprofessional behavior and not putting food in the ovens when the ovens were already full. On January 19, 2018, the employer issued the claimant a written warning for mistakenly putting fish patties back in the cooler after they had been out of refrigeration for too long. On March 7, 2018, the employer issued the claimant a written warning for unprofessional behavior, performance

issues, and not filling orders when she was understaffed. The employer notified the claimant each time that further infractions could result in termination from employment.

On March 28, 2018, the store leader re-evaluated the claimant. Based on the claimant's overall performance, not on a specific incident, the store leader decided to terminate the claimant. He notified his human resources department of his decision on or about March 28, 2018. Human resources responded to his information a week later and sent the matter to the district leader. After hearing from the district leader, the employer terminated the claimant on April 12, 2018, for unspecified performance issues.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's May 1, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs