

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONNIE K GALLOWAY**  
Claimant

**APPEAL NO. 10A-UI-02560-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**Original Claim: 01/17/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Kwik Trip, Inc. filed a timely appeal from a representative's decision dated February 11, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was conducted on March 30, 2010. The claimant participated personally. The employer participated by Kimberly Keil, district leader. Employer's Exhibits One through Eight were received into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Connie Galloway was employed by Kwik Trip, Inc. from November 3, 2005, until January 20, 2010, when she was discharged from employment. Ms. Galloway last held the position of full-time assistant store leader and was paid by salary. Her immediate supervisor was Joanne Goode.

Ms. Galloway was discharged when the employer believed that she did not possess the necessary leadership qualities and abilities required by Kwik Trip, Inc. Ms. Galloway had initially been hired as an hourly employee and subsequently had been promoted in the company. The claimant had received a number of warnings for what the company considered to be unprofessional conduct in February of 2009. The company believed at that time the claimant had not acted quick enough to secure croissants for breakfast serving and also felt that the claimant had allowed and also engaged in inappropriate comments at work. After being warned, the claimant attempted to improve her performance. Ms. Galloway utilized self-help books and reviewed company policies in an effort to improve her performance and to meet her employer's expectations regarding management skills.

On January 11, 2010, the district manager, Ms. Keil, met with the claimant because the claimant had made a statement that she believed another hourly employee had quit their employment. The claimant was warned that the statement was inappropriate, as the employee had made

other arrangements with the store manager. Company management was aware at that time that Ms. Galloway had placed a handwritten message on a company bulletin board in an employee area urging an employee to adhere to company policies. Ms. Galloway felt that the message was appropriate, as that method of communication had been used by her manager to inform Ms. Galloway of deficiencies in the past. After considering the matter for well over a week, the company made a management decision to terminate Ms. Galloway, as they felt she did not possess the necessary managerial attributes.

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

For the reasons that follow, the administrative law judge concludes that the claimant was not discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

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.

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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the 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 App. 1992).

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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The evidence in this case establishes that Ms. Galloway was attempting to the best of her ability to perform her duties to the level of competence expected by this employer. The claimant had been warned in the past and had adhered to the warnings and engaged in self-help educational pursuits in an effort to gain the managerial skills that the employer desired. When Ms. Galloway continued to show management traits that the employer felt were unacceptable, a decision was made to separate her from her employment with Kwik Trip, Inc.

The most recent incidence took place when the claimant made a statement that she believed an hourly employment had quit employment. The statement was accurate based upon Ms. Galloway's perception and the claimant reasonably did not believe that her statements would violate company policy. The claimant also did not believe that placing a written statement in a private employee area would violate company policy, as her manager had done this to her numerous times in the past.

The question before the administrative law judge is not whether the employer can discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the employment security law. While the decision to terminate Ms. Galloway may have been a sound decision from a management viewpoint, intentional misconduct on the part of the claimant has not been shown. The claimant did not possess the necessary skills or abilities to function at the level of competence expected by the employer. Misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated February 11, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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