

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

JENNIFER L MCGREW  
504½ W BOONE ST  
MARSHALLTOWN IA 50158

KWIK TRIP INC  
1626 OAK ST  
PO BOX 2107  
LACROSSE WI 54602

Appeal Number: 04A-UI-01248-HT  
OC: 01/04/04 R: 02  
Claimant: Appellant (1)

**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

STATEMENT OF THE CASE:

The claimant, Jennifer McGrew, filed an appeal from a decision dated February 3, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 26, 2004. The claimant participated on her own behalf and with a witness Barb McGrew. The employer, Kwik Trip, participated by Store Leader Ted Piscitelli. Exhibits One, Two and Three, were admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jennifer McGrew was employed by Kwik Trip from September 16, 1994 until January 6, 2004. She was a full-time cashier.

Throughout the course of her employment the claimant received a number of warnings regarding customer complaints. These complaints all stated Ms. McGrew was rude, aggressive and impolite. Her performance evaluations also stated improvement needed to be seen. The last few warnings notified her that her job was in jeopardy if there were further complaints.

On December 19, 2003, the employer received a customer complaint card regarding an incident involving Ms. McGrew and her conduct. Store Leader Ted Piscitelli consulted with the corporate human resources department as required and was told to investigate further and see if the customer would accept an apology from Ms. McGrew. It took a while to contact the customer because he was a delivery driver, but he stated he would not accept an apology and had no intention of patronizing the store when the claimant was on duty.

The store leader was starting to write up a disciplinary action on this complaint when he received another one from a customer on January 4, 2004. This customer had attempted to cash in a lottery ticket at approximately 2:00 a.m. and was told by the claimant the ticket could not be cashed since the machines necessary to verify the winning ticket were closed down. Again, the complaint was regarding Ms. McGrew's attitude and rudeness. Mr. Piscitelli again notified the corporate human resources department and the decision was made to discharge the claimant for having two customer complaints within so short a period of time.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant had been advised her job was in jeopardy as a result of her rudeness to customers. In spite of the warnings and notices in her performance evaluations, the customer complaints continued. She received two serious ones in the space of two weeks, the customers indicating they would cease to patronize the store during the claimant's work hours. This is conduct not in the best interests of the employer and she is disqualified.

DECISION:

The representative's decision of February 3, 2004, reference 01, is affirmed. Jennifer McGrew is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf