

**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**

**MARCELLA J SCHAFER
PO BOX 64
NEW HARTFORD IA 50660**

**KWIK TRIP INC
1626 OAK ST
PO BOX 2107
LA CROSSE WI 54602**

**RONNIE PODOLEFSKY
ATTORNEY AT LAW
215 FRANKLIN ST
CEDAR FALLS IA 50613**

**Appeal Number: 04A-UI-11405-CT
OC: 09/26/04 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marcella Schafer filed an appeal from a representative's decision dated October 18, 2004, reference 01, which denied benefits based on her separation from Kwik Trip, Inc. After due notice was issued, a hearing was held by telephone on November 16, 2004. Ms. Schafer participated personally and was represented by Ronnie Podolefsky, Attorney at Law. The employer participated by Amy Dall, Store Leader.

Ms. Schafer and her attorney both contacted the administrative law judge on the morning of the hearing to request a continuance on the basis that Ms. Schafer had just been able to meet with the attorney that morning. Ms. Schafer initially contacted the attorney's office on November 2,

2004. She did not read the instructions on the reverse side of her hearing notice and, therefore, did not make a timely request for a postponement when she had not heard from her attorney prior to the day of the hearing. The last-minute request for a postponement was not granted as it was not based on an emergency.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Schafer was employed by Kwik Trip, Inc. from April 28, 2003 until September 2, 2004 as a part-time food service worker. She worked approximately 20 hours each week. She was discharged as a result of a verbal altercation she participated in at work and in the presence of customers.

On August 31, Ms. Schafer was working in her area in the back of the store when she noted her son-in-law, Matt Bordeaux, in the store. He had recently separated from her daughter. Ms. Schafer had become aware of an incident at her granddaughter's school in which Mr. Bordeaux had come to the school to pick up a child. When his daughter saw him, she asked whether he was there for her and he replied that he was there for his other child. This comment apparently caused Ms. Schafer's granddaughter to be upset. On August 31, Mr. Bordeaux was standing approximately ten feet away from Ms. Schafer while she was in her work area. She stated to him, "why did you lie to me about the girls?" This was an apparent reference to statements made by him that he would not hurt his children. Mr. Bordeaux responded by making disparaging remarks about Ms. Schafer's daughter. Ms. Schafer could tell that he was upset and angry with her. She then returned to her duties.

After the incident with Ms. Schafer, Mr. Bordeaux proceeded to the register to pay for his items. He was creating a scene at the register and the cashier on duty was attempting to handle the matter. Ms. Schafer came from her work area to the area of the register and began trying to get Mr. Bordeaux to leave. As he was leaving, she referred to him as a "bastard." There were approximately eight customers in the store at the time. The other employee on duty had called the police and, as a result of the incident, both Ms. Schafer and Mr. Bordeaux were arrested at the store. The above incident was the sole reason for Ms. Schafer's discharge on September 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schafer was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Schafer was discharged as a result of a verbal altercation with a customer on August 31, 2004. The administrative law judge appreciates that she could not have predicted Mr. Bordeaux's response when she initially questioned him in the back area of the store. However, after the initial confrontation, she knew that he was upset and angry with her. If she had remained in her area after the initial confrontation, the administrative law judge would have no trouble concluding that misconduct had not been established.

In spite of knowing that Mr. Bordeaux was angry with her, Ms. Schafer chose to involve herself in the incident that was occurring at the cash register. Given what had just occurred between the two in the back area and Mr. Bordeaux's anger towards her, Ms. Schafer knew or should

have known that her involvement might escalate a situation that was already out of control. Had she remained in her work area and allowed the coworker to continue handling the matter, it seems unlikely that she would have been arrested. Ms. Schafer's altercation with Mr. Bordeaux at the register, in light of the incident just preceding it, constituted a substantial disregard of the standard of behavior the employer had the right to expect in the presence of customers. For the above reasons, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated October 18, 2004, reference 01, is hereby affirmed. Ms. Schafer was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf