

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN M DISRUD
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-07260-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Susan Disrud (claimant) appealed an Iowa Workforce Development March 2, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Kwik Trip (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2021. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing and no message could be left. The administrative law judge took official notice of the administrative file.

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 worked for the employer from April 2016, to January 17, 2020, as a full-time employee. She received the employer's handbook. The employer did not issue her any warnings.

On or about January 7, 2021, the claimant arrived at work with a winning lotto ticket. She handed it to the cashier and asked that the winnings be used to purchase power ball and mega millions tickets. The cashier handled the transaction and set the tickets to the side while the claimant walked around the counter to set down her heavy items.

The claimant looked at the computer and realized she should clock in for her shift. The cashier moved on to helping customers. After the claimant clocked in, the cashier handed the claimant her new tickets. Later, the employer questioned the claimant about the events. Her supervisors told her she did nothing wrong. On January 7, 2021, the employer terminated her after being instructed to do so by the corporate office.

REASONING AND CONCLUSIONS OF LAW:

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(4) provides:

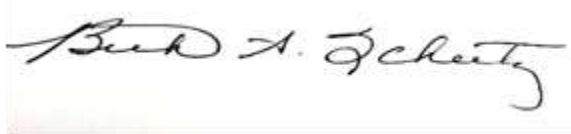
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and,

therefore, provided no evidence of job-related misconduct or violation of policy. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 2, 2021, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

May 26, 2021
Decision Dated and Mailed

bas/ol