

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES COLE**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 21A-UI-02747-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On January 6, 2021, James Cole (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 30, 2020 (reference 03) that denied benefits based on a finding claimant was discharged from work on October 27, 2020 for conduct not in the best interest of employer.

A telephone hearing was held on March 26, 2021. The parties were properly notified of the hearing. The claimant participated personally. Kwik Trip Inc. (employer/respondent) participated by District Leader Chelle Powers.

Official notice was taken of the administrative record.

**ISSUES:**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time assistant store leader. Claimant's first day of employment was March 16, 2020. The last day claimant worked on the job was October 22, 2020. Claimant's immediate supervisors were Stephanie Bonin and Powers. Claimant separated from employment on October 27, 2020. Claimant was discharged on that date.

Claimant was discharged due to several incidents of unprofessionalism. This included reacting angrily, throwing things, using profanity, and touching coworkers in ways that made them uncomfortable. Employer met with claimant on October 22, 2020 to discuss these issues. Claimant reported at that time that he believed the issues were the result of a medical condition which caused mood swings. Employer had previously discussed with claimant concerns about his professionalism. This occurred in August 2020.

Claimant did not request a reasonable accommodation at any point. It is unclear what accommodation may have been available, although claimant indicates a leave of absence may have allowed him to address the medical conditions contributing to the professionalism issues. Claimant did not request a leave of absence.

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

For the reasons set forth below, the decision dated December 30, 2020 (reference 03) that denied benefits based on a finding claimant was discharged from work on October 27, 2020 for conduct not in the best interest of employer is AFFIRMED.

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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

Claimant was unprofessional on several occasions during his relatively short period of employment, including after being warned. While the administrative law judge is sympathetic to claimant's health condition and a leave of absence may have allowed claimant to address the condition contributing to the professionalism issues, claimant did not request a leave of absence, nor was it readily apparent to employer that a leave of absence would correct the issues. Furthermore, while the health condition tends to mitigate the incidents leading to discharge, it does not explain away or excuse those incidents. For these reasons, the administrative law judge finds claimant disqualified from benefits from the date of separation.

The administrative law judge notes claimant has been allowed Pandemic Unemployment Assistance (PUA). This decision does not impact that allowance.

#### **DECISION:**

The decision dated December 30, 2020 (reference 03) that denied regular unemployment insurance benefits based on a finding claimant was discharged from work on October 27, 2020 for conduct not in the best interest of employer is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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April 06, 2021  
Decision Dated and Mailed

abd/ol

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.