

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID D WILLITS
Claimant

APPEAL NO. 07A-UI-02340-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

**OC: 02/04/07 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Kwik Shop, filed an appeal from a decision dated February 27, 2007, reference 01. The decision allowed benefits to the claimant, David Willits. After due notice was issued, a hearing was held by telephone conference call on March 26, 2007. The claimant participated on his own behalf. The employer participated by Store Manager Kai Brown and was represented by Employers Unity in the person of Rachel Thompson.

ISSUE:

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

FINDINGS OF FACT:

David Willits was employed by Kwik Shop from December 19, 2001 until February 2, 2007, as a full-time associate. He received a copy of the employee handbook which contains a policy requiring identification of all customers who appear to be under the age of 27 if they are purchasing tobacco or alcohol. The purpose of the policy is to ensure there is no sale of alcohol or tobacco to under aged individuals, which could result in the employer losing its license to sell these items.

A third-party company does “spot tests” on stores to ensure associates are asking for identification. An associate who sells alcohol or tobacco to someone who appears under the age of 27 without asking for identification is issued a “red card.” Any associate who is issued two red cards in a two-year period is subject to discharge.

Mr. Willits received his first red card July 16, 2004 and a second one July 16, 2006. It was considered that the second incident fell just outside the two-year period, but he received another one on January 27, 2007. He acknowledged he did not ask for identification from the customer on that final date because she was a regular customer and he had personally checked her identification in the past and knew her to be of legal age.

REASONING AND CONCLUSIONS OF LAW:

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 does not deny he did not ask for identification of the customer on January 27, 2007, because he knew her to be of legal age from personally checking her identification in the past. It is undoubtedly extremely important that the employer take steps not to jeopardize its license by selling tobacco and alcohol to minors, but the claimant's conduct in this instance did nothing to jeopardize it. He was well aware, from personal knowledge, this person was of legal age and, therefore, presented no danger to the employer by purchasing alcohol or tobacco. While the claimant's failure to check identification on this occasion was a violation of the policy, misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). Disqualification may not be imposed.

DECISION:

The representative's decision of February 27, 2007, reference 01, is affirmed. David Willits is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css