

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

NICHELLE C HENKE
6426 VOORHIES
HUDSON IA 50643

KWIK TRIP INC
PO BOX 2107
LACROSSE WI 54602 2107

Appeal Number: 06A-UI-03747-DWT
OC: 02/26/06 R: 03
Claimant: Respondent (2)

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
Section 96.7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kwik Trip, Inc. (employer) appealed a representative's March 24, 2006 decision (reference 01) that concluded Nichelle C. Henke (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2006. The claimant participated in the hearing. Amy Dall, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 30, 2005. The claimant worked as a part-time retail sales associate. The claimant started working at a location that closed at 11:00 p.m. The claimant had only recently worked at a store where she worked until 3:00 a.m.

When employees start working, a manager is supposed to train the new employee about the employer's policies, and the employee receives information about the employer's policy. The claimant did not receive any training. Instead, her first manager told the claimant to sign paperwork so she could start working.

The employer follows Iowa's state law that prohibits beer from being sold after 2:00 a.m. The employer has cued cash registers to reject a beer sale that is at 2:00 a.m. or later. The first time the cash register did not allow the claimant to sell beer to a customer at 2:00 a.m. or later, she had to ask M., another employee, why the cash register would not allow her to sell beer.

On February 26, the claimant worked until 3:00 a.m. with M. The claimant believed M. was training her. Around 1:56 a.m., an employee who was not working called the store. When the claimant answered the phone, the co-worker asked the claimant to ring up a beer sale that he would pick up shortly. The employee did not think he would get to the store before 2:00 a.m. When the claimant asked if she could do this, the employee told her that other employees had done the same thing before and no one got into any trouble. The claimant rang up the beer sale for the employee even though no money was exchanged at that time for the beer. Just after the claimant rang up the employee's beer sale, another customer wanted to buy cigarettes and beer. The cash register did not allow the claimant to enter the beer sale and the customer was unable to purchase any beer.

When the employee arrived at the store by 2:01 a.m., he told M. what he had the claimant do. M. did not say anything to either the employee or the claimant. The employee paid for the beer, picked it up from the cooler and then left.

The next day, management learned about the beer-buying incident. The employer concluded the claimant sold beer after 2:00 a.m. because the employee did not pay for the beer or pick it up until 2:01 a.m. The employer discharged the claimant for the February 26 incident. Prior to February 26, the claimant's job was not in jeopardy.

The claimant established a claim for unemployment insurance benefits during the week of February 26, 2006. The claimant filed claims for the weeks ending March 4 through 25, 2006. The claimant received her maximum weekly benefit of \$116.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant knew she should not ring up a sale of beer for a co-worker who called her just minutes before the 2:00 a.m. deadline to sell beer when she asked him if she could do this. The problem with the co-worker paying for the beer and picking it up after 2:00 a.m. is further illustrated when the cash register would not allow the claimant to sell beer to the next customer. At this point, she could have asked a co-worker who worked with her if she could sell beer to the employee who was coming in to pick it up. The claimant had an opportunity to void the sale when the co-worker came in, but she did not. The claimant's excuse that she did not understand the policy is not a legal excuse. Under the facts of this case, the claimant committed work-connected misconduct when she allowed a co-worker to pay for and pick up beer after the 2:00 a.m. deadline. As of February 26, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 4 through 25, 2006. The claimant has been overpaid \$348.00 in benefits for these weeks.

DECISION:

The representative's March 24, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2006. This

disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending March 4 through 25, 2006. The claimant has been overpaid and must repay a total of \$348.00 in benefits she received for these weeks.

dlw/kkf