

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABIGAIL J O CONNELL
Claimant

APPEAL NO: 11A-UI-08741-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 06/12/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 27, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Kimberly Keil, a district leader, and Ryan Arnfelt, a store leader, testified on the employer's behalf. Nicholas Stokes was available to testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2007. The claimant worked part time as a guest service employee. While the claimant could work in any department, she primarily unloaded trucks. Arnfelt supervised her.

On May 26, 2011, the claimant was working. For the second time that week a truck came an hour early. The claimant went to ask Arnfelt if trucks were going to be early all the time. Arnfelt thought the claimant yelled at him and did not appreciate this. He told her go to the back room. He wanted to talk to her about her attitude.

The claimant went to the back room. After Arnfelt told her he did not appreciate her yelling at him, the claimant denied she yelled at him. She explained that she was only asking him a question. The discussion disintegrated and the two started arguing. The two of them talked and confronted one another about various subjects for more than ten minutes. During this confrontation, the claimant became very upset. The claimant became more upset and defensive after Arnfelt indicated that he did not like her or her attitude and neither did any of her co-workers. Out of frustration, the claimant commented that if it was going to be like this, f____

this place. Arnfelt responded by telling her he did not want anyone with her attitude. Arnfelt told the claimant she could leave. Although the claimant told him she needed her job, he responded by telling her that he did not want people who just collected a paycheck. He again told the claimant and escorted her to the back door. The claimant was very upset and understood Arnfelt discharged her when he escorted her to the back door.

The claimant's mother, who also works for the employer, contacted management about the incident that occurred that morning. The claimant called the human resource department the next morning to find out if she still had a job. By the time management contacted the claimant in early June, the employer no longer considered the claimant an employee. The employer ended her employment as of May 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant voluntarily quit her employment as Arnfelt asserted. Instead, Arnfelt would not allow the claimant to stay and told the claimant to leave. Management concluded the claimant's employment was justified. On May 26, the employer discharged the claimant.

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).

Whether the claimant yelled or not when she asked Arnfelt if trucks were going to keep coming an hour earlier is not the reason the employer discharged her. Based on Arnfelt's reaction in talking to the claimant in the back room, he believed the claimant yelled and him when she was only trying to ask him a question. Arnfelt took the appropriate steps in going to the back room to discuss the incident that upset him. Unfortunately, what started out as a discussion ended up in a confrontation between the claimant and Arnfelt. After ten minutes of arguing, the claimant felt Arnfelt personally attacked her when he told her that neither he nor her co-workers liked her or her attitude. The claimant's comment, "If it's going to be like that, f--- this place, was not appropriate. But Arnfelt's comments were not appropriate either and did nothing to diffuse the confrontation.

Even though the claimant was frustrated with Arnfelt, very upset and emotional, the evidence does not establish that she committed work-connected misconduct. Therefore, as of June 12, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 27, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of June 12, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css