

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIA L BLOESER**  
Claimant

**APPEAL NO. 09A-UI-00856-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 11/23/08 R: 03  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Julia Bloeser filed a timely appeal from the January 16, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 5, 2009. Ms. Bloeser participated. The employer did not provide a telephone number for the hearing in response to the hearing notice instructions to do so and did not participate. The employer received proper notice of the hearing. On February 2, 2009, an employer representative requested that the hearing be rescheduled. However, the employer did not provide good cause to reschedule the hearing. The employer alleged a scheduling conflict with a business meeting. However, there was in fact no scheduling conflict, since the telephone hearing was scheduled for 8:00 a.m., was expected to last half an hour, and the employer's meeting was scheduled for 9:00 a.m. In addition, the alleged scheduling conflict did not provide good cause to make the claimant wait longer for resolution of her appeal and resolution of whether she was eligible for subsistence benefits. The administrative law judge's conversation with the employer representative was digitally recorded. The rescheduling request was denied.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Julia Bloeser was employed by Kwik Trip as a part-time cashier from November 2006 until November 20, 2008, when a District Manager discharged her from the employment. The discharge was based on Ms. Bloeser allowing a friend to use her debit card to purchase beer. Ms. Bloeser was 20 years old at that the time. The friend was 23 years old. Ms. Bloeser owed the friend \$10.00. The friend wanted to purchase beer for his own consumption. Ms. Bloeser was not going to consume the beer and was not trying to purchase beer for her own consumption. The friend entered the Kwik Trip store and attempted to use the debit card to purchase the beer. The clerk refused to sell the beer to the friend because the debit card bore Ms. Bloeser's name. The employer alleged that Ms. Bloeser had violated a company policy and discharged Ms. Bloeser from the employment.

## 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Because the employer has elected not to participate in the hearing, the evidence in the record is limited to the testimony of the claimant. The employer has failed to present any evidence whatsoever to substantiate or corroborate its allegation of misconduct. The weight of the evidence indicates that Ms. Bloeser was not attempting to purchase alcohol for her own consumption. The evidence indicates that Ms. Bloeser made a good faith error in judgment, at a time when she was off-duty, by authorizing her 23-year-old friend to use her debit card.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bloeser was discharged for no disqualifying reason. Accordingly, Ms. Bloeser is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Bloeser.

**DECISION:**

The Agency representative's January 16, 2009, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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