

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARVIN HUINKER**  
Claimant

**APPEAL NO: 17A-UI-11532-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 10/01/17**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 1, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 4, 2017. The claimant participated in the hearing. Barb Strong, Store Leader, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time guest services co-worker for Kwik Trip from March 3, 2003 to September 29, 2017. He was discharged for repeatedly failing to clean the coffee shuttle and restroom while indicating he had done so on the employer's task checklist.

On August 11, 2016, the employer met with the claimant regarding cleaning the coffee shuttles because there were issues with the coffee "not tasting right." The shuttles are big silver squares that the big coffee thermoses sit on. Fresh coffee is to be made every two hours and the coffee shuttles also cleaned every two hours. The employer spoke to the food service district leader about the quality of the coffee and he suggested that instead of using two cleaning packets on each shuttle, employees should use three cleaning packets. The employer's policy changed to reflect that requirement and employees were notified of the change. As time progressed, Store Leader Barb Strong observed she was not ordering as many cleaning packets as she should have been. The claimant should have used 12 packets each night he worked and he signed off on the checklist that he was doing so but some nights Ms. Strong noticed no packets were used. She counted the packets each day immediately upon her arrival at work and just before she left work. On August 11, 2017, Ms. Strong and an assistant store leader met with the claimant to discuss the situation and the claimant admitted sometimes he was signing the checklist without cleaning the shuttles. The claimant's performance improved after that conversation but then began to decline again. On September 22, 2017, the district leader came to the store to speak to the claimant about the situation and the claimant again admitted that he sometimes initialed the checklist without doing the cleaning. The district leader asked the claimant to explain how the cleaning was supposed to be done and the claimant described the

process precisely, including the correct number of packets and the water amounts. The employer decided to give the claimant a third chance and the district manager issued the claimant a written warning and told him to only initial the list when he actually did the work. The claimant's performance improved for a period of time. On September 24 and September 27, 2017, the claimant only used two packets instead of the required three packets per coffee shuttle and signed off that he cleaned the cold brew coffee with the correct one packet but did not clean that at all.

The employer also had concerns regarding the claimant marking that he cleaned the restroom when he did not do so. Under the employer's policy, the claimant was required to check the cleanliness of the restroom every 30 minutes. If the door remains propped open and no customers use the restroom during the third shift, employees are allowed to mark off that they checked the restroom. One of the last few days the claimant worked he indicated he checked the bathroom without looking at it. Human resources watched the video to see if the door was closed showing a customer used the restroom and it was closed. On the video the claimant could be heard commenting on the headphones that he was "going to do whatever the fuck he wanted" and "fucking bathroom list." Human resources contacted the district leader and the decision was made to terminate the claimant's employment for failing to properly clean the coffee shuttle and the bathrooms and for falsifying the checklist.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant demonstrated he knew the employer's policy with regard to properly cleaning the coffee shuttles and the restroom but despite that understanding and the written warnings he received regarding those issues, the claimant's behavior persisted. If he felt performing the coffee shuttle cleaning the way the employer expected it to be done would result in an overflow of water, he should have spoken to Ms. Strong about the situation rather than simply ignoring the correct procedure. The claimant showed his attitude about cleaning the coffee shuttles and the bathroom when he used profanity in speaking about the checklist and indicated he was going to "do what (he) wanted" regardless of the employers policy. Additionally, the claimant tried to mislead the employer by falsifying the checklist on several occasions.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

#### **DECISION:**

The November 1, 2017, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn