

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ISAAH H EPPLEY**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 19A-UI-06412-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/14/19  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Isaah Eppley (claimant) appealed a representative's August 6, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Kwik Trip (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2019. The claimant participated personally. The employer participated by Tiffany Deetz, Assistant Store Leader. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 21, 2016, as a part-time guest service co-worker. The claimant signed for receipt of the employer's Code of Conduct on July 18, 2019. The employer did not issue the claimant any warnings during his employment.

The Code of Conduct states, "Examples of inappropriate behavior that will result in immediate termination include but are not limited to: (7) Fighting on company premises. (10) Inefficient performance of duty, incompetence, neglect or duty, loafing or horseplay."

On June 10, 2019, the claimant was working in the kitchen. Two guests, a father and his seventeen-year-old son, entered the employer's establishment. The adult claimant and the minor knew each other. When the minor was turned away from the claimant, the claimant grabbed the minor from behind in what the claimant called a "bear hug". The front of the claimant's body was near or touching the back of the minor's body. The claimant's left forearm extend around and touching the minor's neck or chest. The claimant's head was near the back of the right side of the minor's head. The claimant prohibited the minor from staying in the common area and moved him into the store's kitchen area/doorway. This was the first time the claimant had physical contact with the minor.

The claimant released the minor and the minor touched his head and the area around his ear. The minor's father dabbed a tissue at the area at the area around the minor's ear while a co-worker offered assistance. The claimant intended to grab the minor but did not intend to harm him. The claimant did not speak to the guests after the incident and assumed the minor hit his head on the wall.

At 9:30 a.m. on July 10, 2019, the minor's father called the assistant store leader to complain about the incident and report that his son had suffered a cut around the ear as a result of the claimant's actions earlier that morning. The employer investigated. The assistant store leader met with the claimant on his next scheduled day, July 12, 2019. The claimant was placed on unpaid suspension. On July 18, 2019, the employer terminated the claimant for engaging in horseplay in violation of the Code of Conduct.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally grabbed a minor customer. The claimant's action caused harm to the customer and potential financial harm to the employer. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's August 6, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs