

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LACEY J VANDELLO**  
Claimant

**APPEAL NO. 07A-UI-03711-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 03/04/07 R: 12**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Kwik Shop, Inc. (employer) appealed a representative's April 2, 2007 decision (reference 02) that concluded Lacey J. Vandello (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 25, 2007. The claimant participated in the hearing. Marcy Schneider, a representative with TALX, appeared on the employer's behalf with witnesses, Heather Miller and Steve Uthe. 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?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 5, 2006. The claimant worked as a full-time associate. In late March or early April 2006, the claimant asked another employee if she could borrow \$5.00 from her. The other employee did not have \$5.00 in her purse. After the claimant talked to the employee, this employee took a five-dollar bill from the employer's cash register and gave it to the claimant.

The employee who took the money from the cash register told the employer about the incident. That cash register was \$5.00 short for that shift. The employer also reviewed the store's videotape, which verified she had taken \$5.00 from the cash register and given it to the claimant.

On April 13, 2006, the employer discharged the claimant for taking the \$5.00 the associate gave her from the cash register and for missing a day of work during her probation even though the claimant had a doctor's excuse for the absence.

**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).

Even though the claimant asked an associate for \$5.00, the claimant did not take the money from the cash register; the associate took this money. The associate was not discharged. While the claimant used poor judgment when she saw the associate take \$5.00 from the cash register, it is not known why the associate took the money from the cash register or what she told the claimant. Since the associate who took the money out of the cash register drawer was not discharged, the claimant did not commit work-connected misconduct by asking and then accepting \$5.00 from an associate. If the employer considered the claimant's absence in the decision to discharge the claimant, this incident does not amount to work-connected misconduct either.

Even though the employer had business reasons for discharging the claimant, she did not commit work-connected misconduct. As of March 4, 2007, the claimant remains qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's April 2, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw