

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIE M BRANDENBURG
Claimant

APPEAL NO: 10A-UI-09124-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

OC: 05/23/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kwik Shop, Inc. (employer) appealed a representative's June 15, 2010 decision (reference 01) that concluded Jeremie M. Brandenburg (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2010. The claimant participated in the hearing. Kristy Wulf appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 20, 2009. Since March 2010 he worked full time as assistant manager of one of the employer's Davenport, Iowa convenience store locations. His last day of work was May 20, 2010. The employer discharged him on that date. The reason asserted for the discharge was not completing all of the necessary tasks before leaving and then failing to return to complete those tasks when so instructed.

The claimant had received a written warning on April 6, 2010 regarding issues including incomplete paperwork. On May 20 the claimant was scheduled to work a shift from 6:00 a.m. to 2:00 p.m.; he ran into problems with the paperwork and the cigarette counts, and did not end up leaving the store until about 3:00 p.m. When he left, there were other issues for which he was at least partially responsible that were not completed, such as ensuring that the coolers were filled and the floor was clean. When the claimant left at 3:00 p.m., he was picked up by a cousin; they were heading to another family member's home out of state.

At approximately 6:00 p.m. Ms. Wulf, the store manager, called the claimant. She told him there were duties in the store that he had not seen to completion, and he needed to return and take care of those issues. He explained to her that he was three hours away and did not have a separate means to return to Davenport at that time. She told him that he either needed to come

in that evening and complete the necessary duties, or he did not have a job. When he was unable to return, he was then discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to be able to return to work when instructed, and his failure to complete all duties before leaving. Misconduct connotes volition. Huntoon, supra. A failure in job performance is not misconduct unless it is intentional. Under the circumstances of this case, the claimant's inability to return to complete tasks when directed and his failure to complete those tasks before leaving was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 15, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css