

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CONNIE L MICHAEL  
1512 AVENUE M  
LOT 22  
FORT MADISON IA 52627

KWIK SHOP INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006

Appeal Number: 04A-UI-09496-DWT  
OC: 08/01/04 R: 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kwik Shop, Inc. (employer) appealed a representative's August 26, 2004 decision (reference 02) that concluded Connie L. Michael (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2004. The claimant participated in the hearing. Michelle Hawkins, a representative with Employers Unity, Inc., appeared on the employer's behalf. Brenda Muchler, the store manager, testified for the employer. 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 17, 2003. The employer hired the claimant to work as a full-time cashier. During her employment, the claimant requested that she only work part time or about 24 hours a week.

In June 2004, the claimant notified the employer that she was unable to work as scheduled on June 6 and 20, 2004. On June 13, 2004, the claimant did not report to work or call the employer. The claimant, however, talked to Mulcher later and explained why she had not called or reported to work on June 13. As a result of the June 13 discussion, Mulcher scheduled the claimant in to work on June 17 so the claimant would still have her hours that week.

On July 29, the claimant was scheduled to work at noon. Around 10:30 a.m., Mulcher left a message for the claimant that she did not need to work at all on July 29. The inventory had been completed earlier than Mulcher had anticipated so the claimant was not needed at work. Although Mulcher remembered telling the claimant to call her if she received the message, the claimant did hear on Mulcher's message that she wanted the claimant to call her.

When the claimant did not call her on July 29, Mulcher did not schedule the claimant to work at all the next week, July 30 through August 5, 2004. The claimant called the employer's store later on July 29 to ask when she was next scheduled to work. The employee who was working, Roberta, told the claimant she was not on the schedule. The claimant did not contact Mulcher right away because she assumed Mulcher would call her the next day and let her know when she was scheduled to work. When Mulcher did not call her, the claimant called Mulcher on August 1 at work.

During the August 1 phone conversation, Mulcher was busy with customers but confirmed that the claimant was not on the schedule that week. When the claimant asked if that was it, Mulcher told her yes. The claimant then understood the employer terminated her employment. There was no contact between the claimant or Mulcher again.

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).

The employer asserted the claimant was not scheduled to work because Mulcher did not know if the claimant would report to work when she did not respond to Mulcher's July 29, 10:30 a.m. phone call. Even though the claimant had not failed to work as scheduled in July, the employer for some reason used the claimant's undependability as the reason for not scheduling her any hours July 30 through August 5, 2004. The employer's failure to schedule the claimant any hours, confirming to the claimant on Sunday, August 1, that "this was it," and not contacting the claimant at any time after August 1 led the claimant to reasonably believe the employer discharged or ended her employment.

The claimant did not commit any current act of work-connected misconduct. 871 IAC 24.32(8). Even if the Mulcher asked the claimant to call her on July 29, which the claimant denied, the claimant's failure to contact the employer until later that day does not amount to a substantial disregard of the employer's interests. The claimant acted reasonably even after she learned she was not scheduled any hours from July 30 through August 5, 2004.

Even though the employer may have had business reasons for failing to schedule the claimant after July 29, these reasons do not amount to work-connected misconduct. Therefore, as of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's August 26, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 1, 2004, 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.

dlw/tjc