

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL J CONRAD**  
Claimant

**APPEAL NO. 09A-UI-16358-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 09/20/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 22, 2009, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 7, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Cheryl Rodermund participated in the hearing on behalf of the employer with a witness, Tari Glaspie. Exhibits One and Two were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as an assistant manager from November 20, 2007, to September 18, 2009. He was informed and understood that under the employer's work rules, employees were not to stand in or around the front door while smoking and were to make sure customers were waited on in the store.

On September 18, 2009, the claimant was standing outside near the front door smoking a cigarette. A customer entered the store, but the claimant continued smoking before going into the store to check out the customer's purchases. The claimant also provided a bag to a customer who proceeded to load the bag with food from the roller grill. The customer did not pay for the items, and the claimant did stop the customer from leaving the store with the stolen merchandise. The claimant left two customers on the sales floor while he was in the backroom doing something. Both customers took some merchandise without paying for it.

The employer's district advisor viewed the surveillance video of the store and saw everything mentioned in the previous paragraph. Based on the claimant's conduct in not protecting the store's assets and violating the employer's smoking policy, the employer discharged him on September 18 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated October 22, 2009, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs