

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

BENJAMIN E WHITLOCK  
PO BOX 25  
MORRISON IA 50657

KUM & GO LC  
c/o TALX – UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05806-SWT  
OC: 06/06/04 R: 03  
Claimant: Respondent (2)

**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 is 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  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 20, 2005, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 20, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Mona Ash participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked for the employer as a cashier from June 2004 to April 15, 2005. During his shift, the claimant made comments of a sexual nature to a coworker, Jaime Page, that were unwelcome and made Page feel uncomfortable. The claimant has been treated for depression and had not taken his medication that day. The store manager had previously noticed that his

behavior had become more erratic and had instructed him about making sure he was taking his medication.

The claimant was scheduled to work on April 16 but that day he attempted suicide and was absent from work. He contacted Page because she had previously worked as a social worker and he thought she would help him. Page took him to the hospital. She also called the employer for the claimant and notified the employer that the claimant would not be at work.

On April 18, Page spoke to the general manager, Mona Ash, and reported that the claimant had discussed his sex life at work. Page said his comments made her uncomfortable and she was considering quitting her employment as a result. By April 20, the claimant had been released from the hospital. The employer then discharged the claimant for making improper remarks to a coworker. He had been warned about making sexual comments at work in the past.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of April 24, 2005. The claimant filed for and received a total of \$1,800.00 in unemployment insurance benefits for the weeks between April 24 and June 4, 2005.

#### 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. While the claimant denied making comments of a sexual nature to Page, he also could not explain why Page would be untruthful about his comments. Furthermore, the claimant could not remember when he last worked for the employer and asserted that he had not worked with Page on his last day, which was untrue. This undercuts his credibility about what happened on April 15. Perhaps, his conduct was in some way related to his mental illness since he been off his medication about that time. There is no evidence, however, the claimant lacked the ability to control his actions. The 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.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective April 24, 2005, and was overpaid \$1,800.00 in benefits for the weeks between April 24 and June 4, 2005.

#### DECISION:

The unemployment insurance decision dated May 20, 2005, reference 02, is reversed. 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. The claimant was overpaid \$1,800.00 in unemployment insurance benefits, which must be repaid.

saw/sc