

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

MICHELLE M SALTZGAVER
1701 – 35TH ST
FORT MADISON IA 52627

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

Appeal Number: 04A-UI-03839-CT
OC: 08/24/03 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kum & Go filed an appeal from a representative's decision dated March 25, 2004, reference 02, which held that no disqualification would be imposed regarding Michelle Saltzgaver's separation from employment. After due notice was issued, a hearing was held by telephone on April 27, 2004. Ms. Saltzgaver participated personally. The employer participated by Tim Bannister, Manager, and Patty Boe, Sales Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Saltzgaver was employed by Kum & Go from October 8, 2003 until February 22, 2004 as a part-time associate. On February 22, she notified the manager that she would not be at work due to a family emergency. She was reminded of the employer's policy that she find her own replacement if unable to work. Ms. Saltzgaver explained that she would be unable to find her own replacement as she was in her car on her way out of town. She had received a call that morning advising that her grandfather was suffering a series of strokes. She left home approximately 30 minutes after receiving the call. She was told by the manager that she either had to be at work or find her own replacement. Otherwise, she was to turn in her keys.

Ms. Saltzgaver had never been absent before without arranging a replacement worker. The only thing she had been disciplined for during the course of her employment was the failure to properly stock shelves. She received a verbal warning on the subject in January.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Saltzgaver was separated from employment for any disqualifying reason. Although the employer contended that she quit, the administrative law judge finds to the contrary. It was the employer's decision that she would no longer be able to work for the company because of her failure to be at work or find a replacement. It was the manager who asked that she turn in her keys. For the above reasons, the administrative law judge concludes that the employer initiated the separation. Therefore, it is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It is true that Ms. Saltzgaver failed to find her own replacement for February 22 as was required by the known company rule. However, her failure was for good cause as she was on her way out of town due to a family emergency. This was an isolated incident as she had always found her own replacement in the past. The conduct which brought about the verbal warning in January was resolved with the warning.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Ms. Saltzgaver deliberately and intentionally engaged in conduct she knew to be contrary to the employer's standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 25, 2004, reference 02, is hereby affirmed. Ms. Saltzgaver was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf