

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

WANDA J CUNNINGHAM
1804 – 1ST AVE S
DENISON IA 52442-2108

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

Appeal Number: 06A-UI-03743-DWT
OC: 02/26/06 R: 01
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, 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
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kum & Go LC (employer) appealed a representative's March 21, 2006 decision (reference 01) that concluded Wanda J. Cunningham (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2006. The claimant participated in the hearing. Becky Boroska, the district supervisor, 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:

Did the employer discharge the claimant for work-connected misconduct, or did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in 2002. The claimant worked part time. The claimant had recently applied to work as the manager of the store, but the employer did not hire the claimant for this position. The new manager started on March 6.

The claimant worked about four weeks, every day without a break. On February 27, the employer told the claimant she could go home early because she had completed her work in preparation of an audit. The claimant knew she was scheduled to return to work on March 4 and 5, the 6:00 a.m. to 2:00 p.m. shift.

The employer heard rumors that the claimant was not going to report to work on March 4 and 5. The employer called the claimant on March 1 and/or 3 about this rumor. The claimant admitted she was not going to report to work that weekend because she was not ready to return to work. The claimant was still tired and did not plan to return to work until Monday, March 6. The claimant did not go to a doctor or have any work restrictions that prevented her from working. The employer informed the claimant that if she did not report to work these days as scheduled, she would not have a job.

The claimant did not report to work on March 4 or 5. The claimant did not find another person to cover her shift these days. On March 7, 2006, the employer discharged the claimant. The employer discharged the claimant because she refused to work as scheduled on March 4 and 5.

The claimant established a claim for unemployment insurance benefits during the week of February 26, 2006. The claimant filed claims for the weeks ending March 11 through April 15, 2006. The claimant received her maximum weekly benefit amount of \$243.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Although the claimant asserted the employer discharged her on Friday, March 3, the evidence does not support this assertion. A preponderance of the credible evidence indicates the employer did not consider the claimant's employment to have ended until March 7. The claimant's testimony is not credible as to when the employer told her she was discharged. The claimant's testimony on this point changed. First, the claimant testified the employer told her she would be discharged if she did not report to work as scheduled on March 4 and 5. Later, the claimant testified that the employer told her she was discharged on March 3. Since the claimant's testimony changed, the employer's testimony on this point is more credible than the claimant's. The employer discharged the claimant on March 7, 2006.

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 claimant knew the employer would discharge her if she failed to report to work on March 4 and 5. The claimant made the decision to intentionally and substantially disregard the employer's interests and failed to work as scheduled these two days. The claimant committed work-connected misconduct. As of March 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 11 through April 15, 2006. The claimant has been overpaid \$1,458.00 in benefits for these weeks.

DECISION:

The representative's March 21, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending March 11 through April 15, 2006. The claimant has been overpaid and must repay a total of \$1,458.00 in benefits she received for these weeks.

dlw/kkf