

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

MARY L VAHLE  
2201 CHARLES ST  
BURLINGTON IA 52601

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

Appeal Number: 04A-UI-05549-HT  
OC: 04-04-04 R: 04  
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 – Overpayment

STATEMENT OF THE CASE:

The employer, Kum & Go, filed an appeal from a decision dated May 4, 2004, reference 01. The decision allowed benefits to the claimant, Mary Vahle. After due notice was issued, a hearing was held by telephone conference call on June 8, 2004. The claimant participated on her own behalf. The employer participated by Operations Coordinator Karen Thompson. Mike Jones observed the hearing but did not participate. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Mary Vahle was employed by Kum & Go from November 2, 1998 until April 2, 2004. She was a full-time sales manager.

On March 31, 2004, the claimant was notified she had been selected for a random drug test. Her name was selected by a third-party business and she reported to give the urine sample. The sample was collected in a clean and private facility and was split by the technician at the time of receipt, then sealed.

On April 2, 2004, the medical review officer for the laboratory contacted Ms. Vahle to notify her of a positive drug test for marijuana. She was asked whether she had taken certain specific drugs which would cause a false positive, and replied she had not. The results were submitted to the employer and she was notified the same day she was discharged. The claimant admitted to having smoked marijuana two weeks before the drug test was conducted.

Mary Vahle has received unemployment benefits since filing a claim with an effective date of April 4, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant tested positive for marijuana in a random drug screening. The tests were conducted properly in accordance with Iowa Code Chapter 730.5. The claimant's admission at the hearing she had smoked marijuana two weeks before the test indicates she was under the influence of this controlled substance during her employment. This is conduct not in the best interests of the employer and she is disqualified.

The administrative law judge notes, however, that had the claimant not admitted to taking this controlled substance, the employer's notification of the results to Ms. Vahle would not have met the requirements of Chapter 730.5 of the Iowa Code and would not have been considered under the provisions of Harrison v. Employment Appeal Board, 659 N.W.2d 583 (Iowa 2003).

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of May 4, 2004, reference 01, is reversed. Mary Vahle is disqualified, and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$2,730.00.

bgh/d