

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WANDA E CALHOUN
Claimant

APPEAL NO: 06A-UI-08086-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 07/09/06 R: 02
Claimant: Respondent (2)

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 August 1, 2006 decision (reference 01) that concluded Wanda E. Calhoun (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 August 28, 2006. The claimant participated in the hearing. Chris Coleman, the general manager, 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer about three years ago. The claimant worked at her most recent location the last 18 months as a full-time overnight associate. Coleman became the general manager at this location about two months prior to the claimant's employment separation. A.L. had just started working at the claimant's location as a sales manager and the claimant's immediate supervisor when the claimant's employment separation occurred.

In early July, A.L. looked at a person's driver's license and would not sell tobacco to this person because the person was only 17 years old. This person was a regular customer and personal friend of the claimant. When A.L. would not sell tobacco products to him, he went to the claimant and asked her to sell him the tobacco product. The claimant sold tobacco products to

her friend in front of A.L. The claimant did not look at the person's driver's license because the claimant knew he was 19 years old.

A.L. reported to Coleman that the claimant failed to look at a person's driver's license and sold tobacco to a person who was 17 years old. A.L. also reported that she had personally looked at the person's driver's license. The employer did not talk to the claimant about this incident. Instead, the employer discharged the claimant on July 6, 2006, for failing to look at a person's driver's license and selling tobacco to a minor. The claimant's job was not in jeopardy prior to this incident.

The claimant established a claim for unemployment insurance benefits during the week of July 9, 2006. The claimant filed claims for the weeks ending July 15 through August 12, 2006. The claimant received her maximum weekly benefit amount of \$195.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 and understood she was not allowed to sell tobacco products to minors and the employer required employees to check the identification of anyone who wanted to purchase tobacco products who appeared to be a minor. In early July the new sales manager, A.L., refused to sell tobacco products to a person whose driver's license indicated he was 17 or a minor. The claimant, however, sold the tobacco product to the person, a regular customer, without looking at his driver's license. At the hearing, the claimant asserted this person was a personal friend and he was 19 years old. If the person is 19 years old, the claimant sold to a minor because tobacco products cannot be sold to anyone under 21 years old. Iowa Code § 321.216(C)(2).

Instead of talking to the new sales manager about this situation, the claimant openly and intentionally contradicted her immediate supervisor's decision not to sell tobacco products to a minor. The claimant violated State law and intentionally disregarded the standard of behavior the employer has a right to expect from an employee. The claimant's failure to recognize state law prohibited her from selling tobacco products to anyone younger than 21 when she worked for the employer for three years also amounts to work-connected misconduct. The employer

discharged the claimant for reasons constituting work-connected misconduct. As of July 9, 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 July 15 through August 12, 2006. The claimant has been overpaid \$975.00 in benefits she received for these weeks.

DECISION:

The representative's August 1, 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 July 9, 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 July 15 through August 12, 2006. The claimant has been overpaid and must repay a total of \$975.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs