

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK E MOORE
Claimant

APPEAL NO. 06A-UI-10853-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO
Employer

**OC: 10/01/06 R: 01
Claimant: Respondent (1)**

Section 96.6(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Kum & Go, filed an appeal from a decision dated October 31, 2006, reference 02. The decision allowed benefits to the claimant, Patrick Moore. After due notice was issued, a hearing was held by telephone conference call on November 28, 2006. The claimant participated on his own behalf. The employer participated by District Supervisor Becky Borosko.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Patrick Moore was employed by Kum & Go from May 30 until September 28, 2006. He was a full-time sales associate. The claimant was discharged by General Manager Brenda Barton. The employer maintained it was due to several incidents where Mr. Moore “wrote off” expired food products when he was not authorized to do so. Only managers and assistant managers may do this.

The claimant denied ever writing off any food products or receiving any warnings regarding the issue. He stated he was told by Ms. Barton he was fired for failing a “sting” operation in June 2006.

REASONING AND CONCLUSIONS OF 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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to provide any first-hand, eyewitness testimony regarding the incidents which it maintains caused the claimant to be fired, or any documentation regarding warnings given to the claimant. The general manager is still employed by Kum & Go but did not participate. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of October 31, 2006, reference 02, is affirmed. Patrick Moore is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs