

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

NICHOLE L SHILLING
1598 HWY 5
KNOXVILLE IA 50138

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

Appeal Number: 04A-UI-03196-HT
OC: 02/08/04 R: 02
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 96.5-1 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Kum & Go, filed an appeal from a decision dated March 11, 2004, reference 01. The decision allowed benefits to the claimant, Nichole Shilling. After due notice was issued, a hearing was held by telephone conference call on April 13, 2004. The claimant participated on her own behalf. The employer participated by District Supervisor Mike McGuire.

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: Nichole Shilling was employed by Kum & Go from March 4, 2001 until February 7, 2004. She was a full-time general manager.

In the fall of 2003 the claimant talked to District Supervisor Mike McManus and asked to step down as general manager to become a sales manager. She found the work hours too long and the job stressful. A sales manager from another store, Mary Beth, was brought into the store in December 2003, on a trial basis, but Mr. McManus determined she was too young to take over as general manager, and informed Ms. Shilling of this. The claimant agreed to stay on as general manager since she now had the assistance of Mary Beth to help run the operation.

On February 7, 2004, Mr. McManus called the store and asked for Ms. Shilling, who was scheduled to begin work at 6:30 a.m. However, she had not come in yet and he left a message for her to call. She called him from her home but did not have the sales information he needed and agreed to call him back when she arrived at work, which was approximately 10:30 a.m. She had not come in due to oversleeping, although she maintained Mary Beth had agreed to fill in for her during the beginning of her scheduled shift due to the fact the weather was bad and the claimant had difficulty traveling to work. The claimant called the district supervisor back when she arrived at the store.

Mr. McManus was admittedly somewhat irritated that the sales numbers had not been submitted to him earlier, when they were due, and the claimant had been taking additional time away from the store instead of working the full 54 hours per week as required. He asked her when she intended to make up the hours she had missed and at first she agreed to make them up over the weekend. However, during the second phone call she said she was quitting and he could find someone else to run the store.

Nichole Shilling has received unemployment benefits since filing a claim with an effective date of February 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(21) provides:

- (21) The claimant left because of dissatisfaction with the work environment.

The claimant quit because she no longer wished to continue working as general manager. However, she had agreed to continue in that capacity once a sales manager had been hired. At no time did she give the employer an ultimatum to either find a replacement general manager or she would quit. Ms. Shilling stated she felt the district supervisor was "yelling" at

her, but expressing concern and irritation with an employee not working her assigned shift or putting in the required number of hours cannot be considered anything other than a reprimand. There was no evidence of verbal abuse or inappropriate language. Quitting because of a reprimand is also a voluntary quit without good cause attributable to the employer. 871 IAC 24.25(28). The record establishes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

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 March 11, 2004, reference 01, is reversed. Nichole Shilling 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 \$2,576.00.

bgh/b