

**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**

**VICTOR KURU
2801 EUCLID AVE APT #7
DES MOINES IA 50310**

**WATSON CENTERS INC
3100 W LAKE ST #420
MINNEAPOLIS MN 55416**

**Appeal Number: 05A-UI-05421-RT
OC: 04-24-05 R: 02
Claimant: Appellant (1)**

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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Victor Kuru, filed a timely appeal from an unemployment insurance decision dated May 13, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 8, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Steven Nelms, Human Resources Manager, participated in the hearing for the employer, Watson Centers, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The claimant called the Appeals Section at 9:35 a.m. and the administrative law judge spoke to the claimant at 9:36 a.m. The administrative law judge explained that the hearing began when the record was opened at 9:01 a.m. and ended when the record was closed at 9:10 a.m. and he did not have a telephone number to call for the claimant nor had the claimant called during that time. The claimant informed the administrative law judge that he had called in a number and provided a control number. The administrative law judge verified the control number as accurate and the claimant had called in a number. However, the claimant admitted that he had been told by the Appeals Section that if he was not called by the administrative law judge by five minutes after the time for the hearing, or in this case, 9:05 a.m., he was to immediately call the Appeals Section. The claimant did not do so and waited until 9:35 a.m. The claimant had no reason why he did not call sooner. The claimant conceded that he was instructed to call five minutes after the hearing if he was not called by the judge. The administrative law judge informed the claimant that he would treat his phone call as a request to reopen the record and reschedule the hearing made after the hearing had been held and the record closed. Because the claimant was clearly instructed to call the Appeals Section five minutes after the start of the hearing if he had not been called by the administrative law judge and the claimant failed to do so, the administrative law judge concludes that the claimant has not demonstrated good cause for reopening the record and rescheduling the hearing. The claimant did not follow the instructions given to him by the Appeals Section. Accordingly, the administrative law judge concludes that the claimant's request to reopen the record and reschedule the hearing should be, and it is, hereby denied.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time security guard or public safety officer from July 12, 2004 until he was discharged on April 25, 2005. The employer operates Valley West Mall and the claimant was hired as a security officer for Valley West Mall. The employer has a policy that prohibits an employee, including a security guard, from bringing or having a weapon at work unless the weapon is required for the job and the employee has written authorization. The claimant brought a switchblade knife to work, which knife was not required for the claimant's job and for which the claimant did not have written authorization. The employer learned of this through a co-worker who told the employer's witness, Steven Nelms, Human Resources Manager, that the claimant had brought a switchblade knife to work and was showing it to other employees. Mr. Nelms confronted the claimant and observed the knife. The knife had a button on the handle, which, when pressed, would cause the blade to spring open. The blade was spring-loaded and would open when the button was pushed without manually opening the knife blade. It was not opened by gravity but by a spring of some sort. The blade was between 3½ inches and 4½ inches long. The claimant had never received any warnings or disciplines for this behavior. This was the main reason for the claimant's discharge. The claimant had received a copy of the employer's policy including the prohibition on weapons as noted above and he signed an acknowledgement therefore. Although the claimant has received no unemployment insurance benefits pursuant to his claim for unemployment insurance benefits filed effective April 24, 2005, the claimant is shown as being overpaid unemployment insurance benefits in the amount of \$295.00 from 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 employer's witness, Steven Nelms, Human Resources Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on April 25, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Mr. Nelms credibly testified that the employer has a policy, a copy of which the claimant received and for which he signed an acknowledgement, prohibiting bringing or having a weapon at work unless required for the job and with written authorization. The claimant brought a switchblade knife to work without written authorization and it was not required for his job. The knife automatically opened upon the touch of a button due to a spring-loaded blade. Not only

does the knife in question, a switchblade knife, violate the employer's policy, the knife is a "dangerous weapon" as defined by Iowa Code section 702.7 and anyone who goes armed with such a dangerous weapon concealed on or about their person commits an aggravated misdemeanor. See Iowa Code section 724.4. Accordingly, the administrative law judge concludes that the claimant's act in bringing a switchblade knife to work was a deliberate act or omission constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of May 13, 2005, reference 01, is affirmed. The claimant, Victor Kuru, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. Records show that the claimant is overpaid unemployment insurance benefits in the amount of \$295.00 for 2004.

pjs/pjs