

**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**

**HANNELORE K PITTELKOW
2920 DACE AVE
SIOUX CITY IA 51105**

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

**Appeal Number: 04A-UI-11000-DWT
OC: 09/05/04 R: 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to reopen the record at the address listed at the top of this decision or 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

STATEMENT OF THE CASE:

Kum & Go LC (employer) appealed a representative's September 29, 2004 decision (reference 01) that concluded Hannelore K. Pittelkow (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. A telephone hearing was held on November 3, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Karen Thompson, the operations coordinator, appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on October 12, 1996. She worked as a full-time clerk. The claimant knew the employer's written drug policy allowed the employer to discharge an employee if the employee's random drug test was positive.

On August 25, 2004, the employer requested that the claimant submit to a random drug test. The claimant provided the requested sample. A certified medical laboratory performed the drug testing. A medical review officer verified the claimant's drug test was positive for amphetamines. On September 2, 2004, the employer sent the claimant a certified letter informing her she could have a split sample tested. The claimant did not choose to have another test run. On September 2, the employer also informed the claimant she was discharged for violating the employer's drug-testing policy.

The claimant established a claim for unemployment insurance benefits during the week of September 5, 2004. The claimant filed weekly claims but has not received any benefits because the Department concluded she was not eligible to receive benefits for other reasons.

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. 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 intentionally violated a known work rule. Her conduct amounts to a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug or alcohol test performed in violation of Iowa's drug and alcohol testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The evidence establishes that the testing in this case complied with the drug and alcohol testing laws. Although the claimant asserted she had been taking Sudafed, which resulted in a false positive drug test result, there is nothing in the record to support the claimant's assertion. The employer discharged the claimant for work-connected misconduct. As of September 5, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 29, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 5, 2004. 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.

dlw/tjc