

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DEANNA M JOHNS**  
Claimant

**APPEAL NO: 18A-UI-09749-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 08/26/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 13, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 8, 2018. The claimant participated in the hearing. Brian Clark, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales associate for Kum & Go from June 29, 2016 to August 4, 2018. She was discharged for a no-call/no-show absence Saturday, August 4, 2018.

In early July 2018, the claimant requested vacation for late July/early August of 2018. The employer granted her request. Before the claimant left July 27, 2018, she told the employer they may cut their trip short and if so she could work August 4, 2018, and would consider working August 5, 2018, even though Sunday was her usual day off, because she had missed work due to illness and needed the money. The employer subsequently scheduled her August 4 and August 5, 2018. A co-worker told the claimant she was scheduled those two days. The claimant returned from her vacation in the early morning hours of August 3, 2018. She sent the employer a text message later that day and told him to take her off the schedule. He replied by text that he could not do so because the only other associate scheduled was pregnant and had lifting restrictions and that was one of the employer's two "truck days" each week. At 3:00 p.m. August 3, 2018, the claimant sent the employer a text message stating, "We just got home. Is there any way we could take me off the schedule and start me fresh on Monday? Would that be a problem?" Some associates and the employer noted the claimant's Facebook page indicated she arrived home at 2:00 or 3:00 a.m. August 3, 2018, and had a full day to recover before working August 4, 2018. The employer responded that it would be "a huge problem" as the pregnant associate would be working by herself when the truck came in

and had to be unloaded. He stated, "I'm going to need you to show up." The claimant stated, "Well I'll try but I also am off until the 6th per my request for the vacation and approval as I also said I will try to make it in the 4th and 5th if I could. You said to write it down and if it didn't work out no big deal." The employer did not respond to that text message because he had already told the claimant he needed her to work August 4, 2018. The claimant did not call or show up for her shift August 4, 2018. The employer worked and covered the truck. He called the claimant around 3:00 p.m., shortly after he arrived, but she did not answer so he left her a voice mail message stating due to her no-call/no-show her employment was terminated.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

The employer put the schedule up the day the claimant left for vacation. She had told him she could work August 4, 2018, and she would consider working August 5, 2018, if they cut their trip short and he proceeded to put her on the schedule. Neither of them knew when he made the schedule, if the claimant would end her trip early and be available to work those two days. The claimant did return early on the morning of August 3, 2018, and was aware she was scheduled August 4, 2018, as evidenced by her text to the employer August 3, 2018, stating she wanted him to take her off the schedule. Regardless of how she learned she was scheduled, she did know she was scheduled. She subsequently texted the employer and asked if she could report to work Monday, August 6, 2018, and he clearly told her he needed her August 4, 2018, because it was truck day. The claimant disregarded his text message and was a no-call/no-show August 4, 2018, and the employer notified the claimant her employment was terminated August 4, 2018.

While the claimant did return early from her vacation and knew she was expected to work August 4, 2018, she chose not to show up for work or call the employer to notify him she would not be in. This was clearly a no-call/no-show absence. The employer testified the claimant had some other absences due to illness and some did not include a doctor's note but did not cite the dates or number of those absences. There is no evidence of any previous no-call/no-show absences. Although the employer has a policy that one no-call/no-show absence is a voluntary quit, the claimant did not intend to quit her job. A voluntary leaving requires the intent to quit. Because the claimant's no-call/no-show absence was an isolated incident of misconduct, the administrative law judge cannot find the claimant's actions rise to the level of disqualifying job misconduct. That should not be taken as an endorsement of the claimant's conduct as she was not without fault in this matter. Therefore, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 13, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn