

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

BRANDON M BONNESEN  
209 – 1<sup>ST</sup> ST  
NEOLA IA 51559

KUM & GO  
% TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08221-CT  
OC: 07/04/04 R: 01  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kum & Go filed an appeal from a representative's decision dated July 22, 2004, reference 01, which held that no disqualification would be imposed regarding Brandon Bonnesen's separation from employment. After due notice was issued, a hearing was held by telephone on August 31, 2004. Mr. Bonnesen participated personally. The employer participated by Ruth Anderson, General Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Bonnesen was employed by Kum & Go from December 14, 2003 until July 3, 2004 as full-time sales manager. On July 2, a customer made the general manager aware of an incident, which had occurred on June 18. A young couple attempted to purchase beer but Mr. Bonnesen would not make the sale. Apparently, they went outside and requested that another individual who was pumping gas make the purchase for them. According to the witness who spoke to the employer, the female from the couple re-entered the store with the other individual from outside and pointed out to him what items she wanted to purchase. Mr. Bonnesen rang up the purchase because the individual was of legal age. The other individual then took the beer outside and gave it to the underage couple. The witness told the employer that Mr. Bonnesen witnessed the entire incident and knew the other individual was purchasing beer for the underage couple. He did not witness the female pointing out what she wanted to purchase and did not witness the other individual provide her with the beer after it was purchased. The employer spoke with Mr. Bonnesen on July 3 and discharged him as a result of the incident.

There were a number of occasions on which Mr. Bonnesen was late reporting to work. The employer did not have a problem with his tardiness. He received a written warning on May 23 because he was smoking near his car, which was parked at a gas pump. There was an occasion on which he was having difficulties balancing the books but did not call anyone for assistance. There was another occasion on which he failed to secure cash receipts by putting the money in the safe or the night depository. The general manager has also had occasions on which money was not secured. Mr. Bonnesen had not received any written warnings other than that of May 23.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bonnesen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The final incident which caused Mr. Bonnesen's discharge was the report the employer received on July 2. The evidence failed to establish that he knowingly allowed a person of legal age to purchase beer for underage individuals. It appears that he was busy with other work-related duties and did not observe the exchanges between the underage individuals and the person they asked to purchase beer for them. For this reason, the administrative law judge concludes that Mr. Bonnesen was not guilty of misconduct with regard to the incident.

The other matters which may have played a part in the discharge were isolated instances of poor performance. Mr. Bonnesen should have called someone when he was having trouble balancing the books rather than letting the problem go until the manager found it. His failure to secure the employer's assets was an isolated instance of simple negligence. His conduct in smoking near the gas pumps was an isolated instance of poor judgment. Although the employer's evidence established that Mr. Bonnesen was an unsatisfactory employee, it did not establish a willful or wanton disregard of the employer's interests or standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the

reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 22, 2004, reference 01, is hereby affirmed. Mr. Bonnesen was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf