

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JULIE CARRIGAN**  
Claimant

**KUM & GO LC**  
Employer

**APPEAL 19A-UI-02271-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/10/19**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Kum & Go, LC (employer) filed an appeal from the March 5, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Julie Carrigan (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 1, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through General Manager Cameron Jacobus. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, including the fact-finding documents and the claimant's database readout (DBRO).

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Store Overnight Shift Lead beginning on March 27, 2007, and was separated from employment on February 13, 2019, when she was discharged. The employer has a policy prohibiting theft of company assets.

On January 9, 2019, General Manager Cameron Jacobus was reviewing surveillance footage for an incident unrelated to the claimant. While reviewing the footage, he noticed the claimant enter a sale for a pack of gum into the register and then place the gum in her purse without putting money in the register. Jacobus notified Loss Prevention (LP) about the incident.

On January 11, LP notified Jacobus that they had found similar incidents on January 3, 5, and 9 and would be conducting a more thorough investigation. As part of the investigation, LP looked at the claimant's rewards account purchases that were paid for by exact cash beginning in November 2018. LP associates then reviewed the surveillance footage to determine whether the claimant had actually paid for the items. At the conclusion of the investigation, LP determined the claimant had stolen \$174.00 in merchandise and the investigation was forwarded to the Human Resources Department (HR) for review and action. On or about February 13, Jacobus discharged the claimant as instructed by HR.

The administrative record reflects that claimant has not received any unemployment benefits since filing a claim with an effective date of February 10, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview because the employer's third party representative provided an incorrect phone number for the first-hand witness.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer's unrefuted testimony is that the claimant stole merchandise from the store where she worked. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated company policy. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

As the claimant has not received any unemployment insurance benefits to date, the issue of overpayment is moot and the employer's account has not been and will not be charged.

#### **DECISION:**

The March 5, 2019, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. As the claimant has not received any unemployment insurance benefits to date, the issue of overpayment is moot and the employer's account has not been and will not be charged.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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