

**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**

**LINDA D ANDERSON
410 WEST MARION
KNOXVILLE IA 50138**

**KUM & GO LC
D/B/A KUM & GO
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-02116-R
OC: 01-09-05 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, Linda D. Anderson, filed a timely appeal from an unemployment insurance decision dated February 23, 2005, reference 02, denying unemployment insurance benefits to her. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, at the claimant's request on March 23, 2005, with the claimant participating. Charles Mayberry testified for the claimant. Teri Groenendyk, General Manager of store number 218 in Knoxville, Iowa, where the claimant was employed, participated in the hearing for the employer, Kum & Go, LC, doing business as Kum & Go. This appeal was consolidated with Appeal No. 05A-UI-02117-R for the purposes of the hearing with the consent of the parties. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the

claimant. A telephone hearing was initially scheduled for March 15, 2005 at 10:30 a.m. and rescheduled at the claimant's request for an in-person hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a sales associate or sales representative from May 28, 2002 until she was discharged on January 7, 2005. The claimant's hours varied from full time to part time. The claimant was discharged for inappropriately taking discounts and using a coupon in the purchase of cigarettes from the employer on December 31, 2004. On that day, the claimant purchased four packs of Marlboro cigarettes. The claimant was an employee working at the store at the time. Employees who make purchases are supposed to have the purchases rung up by someone else if there is another worker at the store. If the employee is alone the employee is to make the purchase and then sign a receipt and place it in the receipt drawer. The claimant did not do this. The claimant purchased the four packs of Marlboro cigarettes taking a discount for a three-pack deal sponsored by Marlboro providing a discount of \$.30 per pack per three packs or a total discount of \$.90. The claimant also took a three-pack discount for major brands for three packs of cigarettes at \$.26 per pack for a total of \$.78. The claimant then used a vendor coupon for an additional \$5.00. The vendor coupon was supposed to be used for a carton of cigarettes, but the claimant used it for a four pack and the coupon was for \$5.00. The initial cost of the four packs of cigarettes was \$13.56 and after subtracting therefrom the two discounts as noted above and the coupon, but adding in \$.83 for tax, the claimant's total purchase was \$7.71. The claimant wrote out a check for that amount. The claimant then did not sign the receipt that was generated from the sale nor did she place the receipt in the drawer as was required for an employee purchase when alone in the store.

The employer learned of this sale when the sales manager was reviewing receipts and reprinted a receipt for this transaction as shown at Employer's Exhibit One. Employer's Exhibit One is a reprint of the receipt for the transaction made by the claimant on December 31, 2004. The sales manager reported this to the General Manager Teri Groenendyk, the employer's witness. She confronted the claimant with the receipt and the claimant admitted to the purchase and admitted to the receipt. Ms. Groenendyk then consulted her supervisor who told her that the claimant would have to be discharged because she took discounts to which she was not entitled and a coupon to which she was not entitled and didn't follow the employer's policies in the purchase by employees of the employer's merchandise. The claimant was discharged on January 7, 2005. The claimant had received no related warnings or disciplines for this or similar behavior.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on January 7, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, 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. The employer's witness, Teri Groenendyk, General Manager of store number 218, in Knoxville, Iowa, where the claimant was employed, credibly testified that on December 31, 2004, the claimant made a personal purchase of four packs of Marlboro cigarettes taking both a three-pack discount from Marlboro and an additional three-pack discount for major brands as well as using a \$5.00 coupon. This purchase is reflected at Employer's Exhibit One. Ms. Groenendyk credibly testified that the claimant, when confronted, conceded that she had made the transaction and that the reprinted receipt at Employer's Exhibit One was true and correct. The claimant does not now contest the fact that the receipt was hers, but states that she does not know whether the receipt is hers because there is no other evidence therefore. The administrative law judge concludes that the receipt was the receipt for the claimant's purchases. The claimant conceded that she bought four packs of Marlboros and used two discounts and a coupon, which is all reflected on the receipt. It is most unlikely that another person would have come into the store in the same day and made the exact same purchase using the exact same discounts and coupons. Ms. Groenendyk also credibly testified that the claimant did not follow the proper procedure for employee purchases by signing a receipt and placing it in the drawer.

The claimant first testified that she was aware of the process for an employee making a purchase and that she did not know whether she had followed it or not. Later, the claimant testified that she thought she did not have to follow the process if she used a check. The claimant's statements are inconsistent. Further, at fact-finding, the claimant stated that she did ring up a purchase herself with nobody present and failed to put her name on the receipt and put it in the drawer. She also said that the proper procedure was to put the transaction on suspend until the next cashier came in. The claimant also stated at fact-finding that she did not know why she chose to ring up the purchase then and concedes that she used a Marlboro coupon of \$5.00 plus two discounts and concedes she should only have used one discount and that the coupon was for a carton. The claimant even conceded that she got an extra \$5.66 off that she should not have. The claimant also stated at fact-finding that she does smoke and then stated that she didn't sign the receipt and put it in the drawer because she was busy but conceded that she is suppose to do that when an employee rings up his or her purchases. The claimant at the hearing repudiated all of the statements at fact-finding. Ms. Groenendyk credibly testified that a purchaser can only use one discount and if the purchaser uses a coupon the purchaser cannot use any coupon discount. Ms. Groenendyk further credibly testified that the coupon was for a carton. The claimant seems to confirm all of this at fact finding. Finally, the claimant's witness, Charles Mayberry, testified that the claimant purchased the cigarettes for him when he gave her \$20.00 to use. However, the claimant used a check instead of the \$20.00 provided by Mr. Mayberry. At fact-finding, the claimant implied that she was buying the cigarettes for herself. Finally, both the claimant and Mr. Mayberry were adamant that the coupon was for \$4.00 but the receipt showed a \$5.00 coupon. When the claimant learned of this, she then equivocated about the value of the coupon. At the hearing, the claimant testified that she first rang up the purchase but took only one discount and then did not finish the transaction because she got busy and put the transaction on suspend and then after carrying out other duties she returned and mistakenly took the second discount. This does not explain the use of the carton coupon and was not mentioned at all at fact-finding. There are just too many inconsistencies between the claimant's testimony at the hearing, Mr. Mayberry's testimony at the hearing, the claimant's statements at fact-finding, the claimant's statements made to Ms. Groenendyk when confronted, all as compared to the receipt at Employer's Exhibit One, to make the claimant's testimony credible.

Accordingly, the administrative law judge is constrained to conclude that the claimant did make the purchase as charged by Ms. Groenendyk and as shown at Employer's Exhibit One without following the employer's procedures for a purchase by an employee and using inappropriate discounts and coupon. The administrative law judge further concludes that this purchase was a deliberate act or omission constituting a material breach of her duties and obligations arising out of her workers' contract of employment and evinces a willful or wanton disregard of the employer's interest and is disqualifying misconduct. The administrative law judge notes that there was evidence that the claimant had followed proper procedures in the past for employee purchases. If the claimant had been more forthcoming about this matter and more consistent in her statements, the administrative law judge might have been persuaded that her act was in fact an isolated instance of negligence or a good faith error in judgment or discretion, but the administrative law judge is constrained to conclude here that the claimant's act was willful and deliberate and much more than ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision dated February 23, 2005, reference 02, is affirmed. The claimant, Linda D. Anderson, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

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