

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD MOSS
Claimant

APPEAL NO: 11A-UI-06361-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 07/11/10
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Kum & Go, LC (employer) appealed an unemployment insurance decision dated May 2, 2011, reference 03, which held that Chad Moss (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2011. The claimant participated in the hearing. The employer participated through Chris Mason, General Manager and Cashier Nicole Murdoch. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time sales manager from November 29, 2010 through April 12, 2011. He was discharged for making a threat against the general manager. The claimant began his shift at 11:00 p.m. on April 9, 2011 and Chris Mason, the general manager, arrived at the store at approximately 11:30 p.m. The roller grill was empty and Mr. Mason asked the claimant if he was cleaning it. The claimant said he was so Mr. Mason said nothing more about it.

When the employer returned to work in the morning, employees Ashley Kingery and Nicole Murdoch reported that the claimant told them that he was not bringing his knife to work because he would stab Mr. Mason. Mr. Mason called the claimant to the store on April 12, 2011 and questioned him about the comment. The claimant responded that it was nothing against them but it was personal against Mr. Mason. The employer discharged the claimant at that time.

The claimant denies he made the knife comment, denies that he was questioned about it by Mr. Mason and contends he was told he was discharged for making disrespectful comments towards Mr. Mason. He admitted he said to more than one employee that Mr. Mason was a

“fucking idiot” because he sent text messages to a female employee. Mr. Mason claimed the messages were sent before he was the general manager at that store.

The employer read written statements into the record that Ms. Kingery and Ms. Murdoch wrote confirming the claimant had made the knife comment. Ms. Murdoch was called during the hearing and under oath, affirmed her written statement. After her testimony, the claimant had no questions for her and no further comment.

The claimant filed a claim for unemployment insurance benefits effective July 11, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on April 12, 2011 for

threatening his general manager. Although he denies making a comment about stabbing the general manager, the preponderance of the evidence confirms he did in fact make that comment. The claimant also admitted he called the general manager a fucking idiot to at least two employees but the employer had no knowledge of that fact so it was not a basis for termination. The claimant's comments show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated May 2, 2011, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css