

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DOUGLAS D NORRIS**  
Claimant

**APPEAL NO. 18A-UI-08603-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 07/15/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Douglas Norris (claimant) appealed a representative's August 10, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Kum & Go (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 31, 2018. The claimant participated personally. The employer participated by Amanda Zimmerman, District Supervisor.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on September 26, 2016, as a full-time general manager working 6:00 a.m. to 4:00 p.m. The claimant's work location in Adel, Iowa, did not have a private office. His previous supervisor authorized him to work on scheduling/disciplinary actions at another employer location. The employer has a handbook but the claimant did not receive a copy of it.

The employer issued the claimant a written warning on approximately June 15, 2018, when the claimant's children visited the store and wanted to help their dad stock the shelves. The employer issued him a warning for violating child labor laws.

The claimant's children were staying with him during the summer of 2018. The claimant lived in Pleasant Hill, Iowa, and worked in Adel, Iowa. On July 7, 2018, he sent a message to his district supervisor saying he found a sitter in Des Moines, Iowa, from 8:00 a.m. to 4:00 p.m. He received a message from his supervisor that seemed to authorize his reduced hours. The claimant assumed the supervisor knew it was an hour drive from Des Moines, Iowa, to Adel, Iowa. The employer heard the claimant was arriving at 9:00 or 10 a.m. and leaving at 2:00 or 3:00 p.m. It also heard the claimant was taking office time at home when he was really using office time at another employer location.

On July 12, 2018, the claimant requested and was granted unpaid personal leave to take care of behavior issues with his children. The claimant asked if he could have leave until August 2, 2018. At that time the children would be returned to their mother. The supervisor responded that the claimant should understand that the leave would be unpaid. The claimant understood this. On July 18, 2018, the claimant asked his supervisor for confirmation about his return to work date. The supervisor told him he was terminated for attendance issues.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. No dates or incidents were provided by the employer. There was no indication that the claimant received the employer's attendance policy or handbook. The employer did not provide any evidence of warnings for attendance issues. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's August 10, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs