

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

ROYCEANNA L LINDER  
202 W CHICAGO ST  
ALBION IA 50005

KUM & GO LC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-00462-DWT  
OC: 12/11/05 R: 02  
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

STATEMENT OF THE CASE:

Kum & Go (employer) appealed a representative's January 6, 2006 decision (reference 01) that concluded Royceanna L. Linder (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2006. The claimant participated in the hearing with witnesses, Wendy Bates and Bill Kruse. Bill Hook, the general manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

## FINDINGS OF FACT:

The claimant started working for the employer on March 11, 2002. The claimant worked full time as an assistant manager. Hook became the claimant's supervisor in October or November 2005.

Before Hook became the store manager, the claimant worked 5:00 a.m. to 3:00 p.m. either four or five days a week. The claimant did not work any weekends. When Hook started managing the store, he took over the early morning hours and told the claimant she could not start working before 7:00 a.m. Also, Hook planned to schedule the claimant to work every weekend. Hook changed the schedule so the claimant would work 7:00 a.m. to 3:00 p.m. or 5:00 p.m. Wednesday through Sunday. The claimant told the employer she could not work past 3:00 p.m. because it took her 45 minutes to get home and she had to pick up her child from daycare no later than 4:30 p.m. The claimant also indicated she could not work every weekend, but would consider working every other weekend. Hook had to change employees' schedules because upper level management reduced the number of hours his employees could work.

The claimant suggested other ways employees could work so she would not have to work weekends. Hook did not act upon her suggestions. After the claimant indicated she could not work Hook's new schedule, he asked if she wanted to work at the Marshalltown store. The claimant declined working at that store for personal reasons.

While the claimant hoped to negotiate the schedule with the employer, the new manager understood the claimant was unwilling to work any weekend. The employer discharged the claimant on December 15, 2005. The employer ended the claimant's employment because she was unwilling to work her scheduled hours, including weekends.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. A new manager changed the hours the claimant had been working and scheduled her to work every weekend. Since the employer understood the claimant refused to work any weekend, the employer discharged the claimant.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer made a business decision to change the claimant's hours of work. If the claimant had quit, she would have quit with good cause because requiring the claimant to work weekends when she had not been required to weekends before constitutes a substantial change in the employment contract. Since the claimant did not quit, the employer has the burden to establish the claimant committed work-connected misconduct.

The fact the claimant tried to negotiate a modified schedule where she was not required to work every weekend, establishes that the claimant did not commit work-connected misconduct under the facts of this case. As of December 11, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's January 6, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 11, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs