

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALEB A BATES
Claimant

APPEAL NO. 06A-UI-09649-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

**OC: 08/27/06 R: 04
Claimant: Appellant (5)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Caleb A. Bates (claimant) appealed a representative's September 22, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Kum & Go LC (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 17, 2006. Although the claimant responded to the hearing by contacting the Appeals Section prior to the hearing, the phone number he provided was continually busy. As a result, the administrative law judge was unable to contact the claimant. The claimant did not contact the Appeals Section on October 17, 2006. Linda Burgart, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 14, 2006. The employer hired the claimant as a full-time assistant manager. When the claimant asked for his hours to be reduced, he worked part time the last month of his employment.

During his employment, Burgart talked to the claimant a number of times about his attendance or failure to work as scheduled. The first incident occurred during the claimant's midnight to 7:00 a.m. shift on April 23, 2006. The claimant did not call or report to work for this shift. On April 24, the claimant left a message with another employee that he was unable to work the next

few days because he had hit a deer and was moving. On April 25, Burgart talked to the claimant and learned he needed time off because he had to get a headlight repaired that had been damaged when he hit a deer and was moving. On July 20, the claimant reported to work an hour late. The claimant did not inform the employer he would be an hour late.

After the claimant did not call or report to work as scheduled on July 24, 2006, the employer warned him that he had to find a replacement or notify the employer when he was unable to work as scheduled. The employer understood the claimant did not report to work on July 24 because of a migraine headache.

The claimant worked as scheduled on August 24. The claimant was scheduled to work on August 25, 8:00 a.m. to 4:00 p.m. The claimant did not call or report to work on August 25. The claimant was not scheduled to work again until Monday, August 28, at 4:00 p.m. The claimant called the employer the morning of August 28 and apologized for not reporting to work or calling the employer on August 25. The employer then informed the claimant that he no longer worked for the employer. The employer considered the claimant to have voluntarily quit his employment when he did not call or report to work on August 25. The employer understood the claimant did not report to work on August 25 because he was busy taking care issues that related to the claimant going back to school.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his employment. Instead, the employer initiated the employment separation by ending the claimant's employment on August 28, 2006.

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 claimant knew or should have known the employer required him to find a replacement or contact Burgart when he was unable to work as scheduled. The claimant worked as scheduled on August 24 and was scheduled to work on August 25. The claimant's failure to notify the employer that he was unable to work as scheduled on August 25, after the employer specifically told him that he had to contact Burgart when he was unable to work, constitutes an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of August 27, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 22, 2006 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 27, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw