

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ANNA M MOORE**  
Claimant

**APPEAL NO: 19A-UI-00364-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 12/09/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 4, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 28, 2019. The claimant participated in the hearing. Seng Lee, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales manager for Kum & Go from April 21, 2008 to December 15, 2018. She was discharged for alleged bullying and creating a hostile work environment.

Sometime prior to November 22, 2018, an associate parked directly in front of the store during a rain storm and the claimant instructed her to move her car because employees were not allowed to park there. The associate was upset because she had new shoes on and another sales manager had been allowed to park in that spot previously. She reported the situation to the employer (no date provided).

Another associate moved the matches and threw away the container they came in and the claimant instructed her not to do so again. That associate reported the claimant said she would do it her "own way" which upset the associate (no date provided).

The employer interviewed the two associates and then a third associate who was mentioned as a witness to these events. The witness confirmed the associates' accounts of the incidents and the employer terminated the claimant's employment for bullying.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

As a sales manager the claimant was tasked with enforcing the employer's rules. While her actions may not have been popular with all employees and her manner may have been somewhat discourteous, the employer had not warned the claimant about being rude for three or four years and the claimant believed she had corrected the problem. Although the claimant

might have handled the situations cited more diplomatically, her actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The January 4, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn