

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORINNA I FRYMOYER**  
Claimant

**APPEAL NO. 09A-UI-14466-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**Original Claim: 08/23/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Kum & Go, L.C. (employer) appealed a representative's September 17, 2009 decision (reference 01) that concluded Corinna I. Frymoyer (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2009. The claimant participated in the hearing. Alan Willis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 5, 2009. She worked full-time as a sales associate in the employer's Tipton, Iowa, sandwich shop. Her last day of work was August 22, 2009. The employer discharged her on that date. The reason asserted for the discharge was accessing a confidential file, causing problems with coworkers, and poor job performance.

The employer had some general concerns regarding the claimant's job performance, including making sandwiches other than as directed. The claimant had worked at a related sandwich shop in the past, and that shop had allowed variances that were not allowed at the employer's store, but she occasionally had slipped into the prior practice. She had not been given any warnings for this conduct, and would not have been discharged for this conduct alone.

On August 21, four other employees came to the general manager, Mr. Willis, and made various reports to him regarding the claimant. Based on those reports, the employer asserted that on or about August 18 the claimant had broken into a locked cabinet in Mr. Willis' office. While the claimant acknowledged that at on a prior occasion a coworker had shown her how the cabinet

could be opened, she denied ever breaking into the cabinet. Based on the coworkers' reports, the employer also asserted that the claimant had told other employees about her salary and performance review, had stated she was going to try to get Mr. Willis fired, and had admitted making a bogus "customer" complaint to the corporate office that would reflect poorly on Mr. Willis. The claimant indicated the only discussion she had had with any coworker regarding a performance review was inquiring of another employee who had been hired about the same time as she had been whether she had gotten her six-month review yet; she denied any discussions regarding salary, denied making any statements about getting Mr. Willis fired, and denied saying she was responsible or that she in fact was responsible for the "customer" complaint to the corporate office. The claimant suggested that the statements of the coworkers were negative because of the fact that she admittedly had been somewhat bossy and pushy while she was pregnant prior to June 2009, and that at least some of the coworkers disliked the claimant's boyfriend occasionally coming into the store.

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

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is primarily the assertions made by the claimant's coworkers. Assessing the credibility of the witnesses and the reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant committed the offenses as asserted by the coworkers. The employer relies exclusively on the second-hand accounts from the coworkers; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the coworkers

might have been mistaken, whether they actually observed the incidents in question, whether they are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of their reports. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's September 17, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw