

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODA D SKEFFINGTON-VOS**  
Claimant

**APPEAL NO: 08A-UI-04951-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 04/06/08 R: 02**  
**Claimant: Respondent (4/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Kum & Go, L.C. (employer) appealed a representative's May 15, 2008 decision (reference 04) that concluded Coda D. Skeffington-Vos (claimant) was qualified 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 7, 2008. The claimant participated in the hearing. Steve Uthe 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 26, 2007. He worked full time as an overnight associate in the employer's Ames, Iowa convenience store. He had advised the employer at least in February 2008 that he was going to be leaving the employment because he had joined the army and would be sent for training. At approximately this point the employer began hiring other employees for the overnight shift and reducing the claimant's hours because of a concern the claimant would not be available to work.

In early April the claimant gave the employer a note asking for a number of days off that month, and further indicated that his last day of work would be about May 20, because he was leaving for training on May 23 (as he believed at that time). The employer did not put the claimant on the schedule for any shifts after April 5, telling him that he should use the remaining time before he left for training to be with his family. There was some discussion as to whether the claimant might return to his employment at the employer upon completion of his military training. The claimant's training date was ultimately moved up, and he left on May 12 to begin training on May 14. He was in basic training until July 22, whereupon he immediately entered advanced training, which he completed on October 6.

The claimant established an unemployment insurance benefit year effective April 6, 2008. He made weekly claims and received benefits for the five-week period beginning at that point and ending May 10, 2008, after which he was engaged in military training. As of October 7 the claimant has returned home from training and is now on reserve status. He has not as yet had an opportunity to determine whether to seek to return to his employment with the employer.

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

If the claimant voluntarily quit, he would be disqualified unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. If the employer discharged the claimant, he would be disqualified only if it was for work-connected misconduct. Iowa Code § 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant did express an intent to leave his work with the employer in order to join the military. However, leaving employment in order to join the military is not automatically disqualifying. Rule 871 IAC 24.25(8) provides that there can be disqualification where:

The claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant shall be considered to be on leave from employment. It shall only be considered a voluntary quit issue when upon release from military service such claimant does not return to such claimant's employer to apply for employment within 90 days; provided, that such person shall give evidence to the employer of satisfactory completion of such military service and further provided that such person is still qualified to perform the duties of such position.

According to this rule, the claimant has not yet "quit" but would have been on leave status from May 14 through October 6. The case will be remanded for an investigation and preliminary determination to be conducted after 90 days from October 7 to determine whether there has then been a quit as provided under the rule, which would only be disqualifying from that point, not as of April 5, 2008.

The issue in this case is then whether the employer effectively discharged the claimant by not scheduling him for work after being given notice of the date the claimant would be leaving for training for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to for practical purposes end 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has effectively 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).

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 which 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 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. 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 the employer effectively discharged the claimant was the concern that he might be unreliable to be available to work when scheduled because of his imminent departure for military training. While the employer may have had a good business reason for deciding to stop scheduling the claimant for work, it 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 for the period between the discharge and the date he otherwise would have left for military training.

**DECISION:**

The representative's May 15, 2008 decision (reference 04) is modified in favor of the employer. The claimant left the employer to enter military training effective May 12, 2008. The employer's removal of the claimant from the work schedule prior to the effective date of the date the claimant intended to leave was not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits from April 6, 2008 until May 11, 2008. The employer is chargeable for any benefits paid for that period. The matter is remanded to the Claims Section for investigation and determination of the issue as to whether the claimant's leaving to enter military training has become a quit if he does not seek to return to the employer to apply for employment within 90 days from October 7, 2008.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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