

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

BRADLEY L COWGER
4322 – 101ST ST
URBANDALE IA 50322

KUM & GO
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03199-HT
OC: 02/15/04 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Kum & Go, filed an appeal from a decision dated March 10, 2004, reference 01. The decision allowed benefits to the claimant, Bradley Cowger. After due notice was issued a hearing was held by telephone conference call on April 13, 2004. The claimant participated on his own behalf and with a witness Joann Cowger. The employer participated by Payroll Representative Mike Jones.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Bradley Cowger was employed by Kum & Go from November 18, 2003 until February 17, 2004. He was a full-time sales assistant.

On February 17, 2004, the claimant was notified at 6:30 a.m. by his supervisor, Joe Standefer, that he had been selected for a random drug screening. The claimant was to report to the approved laboratory at 7:00 a.m. to give the sample. When Mr. Cowger reported he was asked for a photo ID, but did not have one. Although he has a driver's license, he does not carry it with him. The attendant at the lab told him he could not take the test without the photo ID and he would have to reschedule.

Mr. Cowger did not talk to his supervisor immediately, but went home and went to sleep. Before he was scheduled to report for his next shift, Mr. Standefer called and told him he was fired for refusing to take the drug test.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Although there is no dispute the claimant did not give a sample for a random drug screening on February 17, 2004, there is no evidence he was refusing to take the test, only that the laboratory would not take the sample without a photo ID. The claimant was not advised in advance he would have to have the identification. Although it would certainly have been prudent for Mr. Cowger to notify his supervisor immediately of the problem and request guidance on how he should proceed, there is no indication he was unwilling to take the test when another appointment could be scheduled. The employer has failed to establish willful and deliberate misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of March 10, 2004, reference 01, is affirmed. Bradley Cowger is qualified for benefits, provided he is otherwise eligible.

bgh/b