

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 D JOHNSON
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JOHNSTON IA 50131

KUM & GO LC
c/o FRICK UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02217-BT
OC: 01/25/04 R: 02
Claimant: Respondent (2)

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 for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Kum & Go (employer) appealed an unemployment insurance decision dated February 18, 2004, reference 01, which held that Bradley Johnson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2004. The claimant participated personally. The employer participated through Joe Standefer, District Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general manager from September 17, 2002 through January 27, 2004. The claimant was discharged for a repeated failure to follow directives. As a store manager, he was ultimately responsible for the store but he felt it was a mutual responsibility between the general managers and the sales managers, who were more like assistant managers. Store or general managers are paid salary while the sales managers are paid on an hourly basis. The employer has specific standards as to its store's appearance and cleanliness. On a quarterly basis, the district supervisor and the vice-president of operations conduct "Mr. Clean" tours and the claimant failed three out of the last four. The employer repeatedly counseled the claimant about how it was necessary to meet the company's standards. Most of the times when the district supervisor went to the claimant's store, the store was not up to standards. It was usually in disarray, with mud and soda spills on the floor. The bathrooms were messy and the store shelves and coolers were out of stock. The district supervisor usually left lists of what should have been done and what had to be done. The claimant usually worked with one other clerk, as well as another person in the deli section of the store.

The claimant was simultaneously working selling real estate and the employer believed that might have been part of the problem. On January 20, 2004, the district supervisor arrived at the claimant's store at 1:30 p.m. and found out the claimant had left at 11:00 a.m. when he was on the schedule to be working. The claimant was at home dealing with family issues. The district supervisor had advised the claimant to contact him if the claimant needed to leave the store for any reason but that was not done. The supervisor helped the clerk clean the store so it was presentable and the clerk appeared relieved. A message was left for the claimant to call the supervisor but the claimant did not call him even though he returned to the store at approximately 4:00 p.m. that day. The supervisor stopped on January 21, 2004 around 1:00 p.m. and again the claimant was not at his store although he was scheduled to be working. A district meeting was held on January 22, 2004 in which the district supervisor took the time to talk privately to the claimant about the poor appearance of his store and his excessive absences. The claimant said he would try to do better. The supervisor stopped at the store on January 23, 2004 after the claimant had left for the day and the store was a mess. The supervisor decided to discharge the claimant but when he stopped at the store on the following Monday, the claimant was not there and had not called to report his absence. The claimant was finally discharged on Tuesday morning, January 27, 2004.

The claimant filed a claim for unemployment insurance benefits effective January 25, 2004 and has received benefits after the separation from employment in the amount of \$1,963.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 Section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for repeatedly failing to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew the employer's standards for its stores and failed to bring his store up to that standard. Additionally, the claimant was missing a lot of time from work for non-work-related matters. He had received several verbal warnings but continued to disregard the employer's instructions. The claimant's failure to follow the employer's directives was a willful and material

breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated February 18, 2004, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,963.00.

sdb/s