

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELA M WIKE**  
Claimant

**KUM & GO LC**  
Employer

**APPEAL 15A-UI-07803-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 1, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2015. Claimant participated. Employer participated through district sales supervisor, Scott Miller.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as an assistant store manager from May 23, 2013, and was separated from employment on May 29, 2015, when she was suspended and later terminated.

On May 12, 2015, Miller received the audit report for the store at which claimant worked. The audit report revealed that the store was missing product valued at over \$10,000.00. Miller began investigating the shortage. Miller viewed the video footage of all transactions that were entered “no-sale” or “void” during the month of May 2015. Miller determined that during May 2015, claimant rang up product, voided the transaction, and then allowed the customer to leave the store with the product on approximately 50 occasions. Miller also observed at least five incidents in which a customer picked up product from the shelf and brought it to claimant at the counter. Claimant used the product to complete a refund transaction and gave the customer cash. The customer then put the product back on the shelf and used the cash to buy lottery tickets.

Employer reported claimant’s conduct to the Mason City Police Department. The investigation is ongoing as employer is still gathering all relevant video footage.

On May 28, 2015, Miller showed the store manager the video footage of claimant to verify what occurred. Miller called claimant several times that day and left voice messages. On May 29, 2015, claimant returned Miller’s phone call. Miller explained employer was putting claimant on

unpaid leave pending the outcome of employer's investigation into theft. Miller asked claimant if she knew anything about giving away product to customers. Claimant admitted she knew what Miller was talking about. Miller asked claimant to meet with him on June 3, 2015. Claimant did not appear for the meeting per the advice of an attorney. Employer terminated claimant.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to

substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant's actions were in deliberate disregard of employer's interests. Claimant was suspended and terminated for disqualifying misconduct. Although claimant denies engaging in the alleged theft, the administrative law judge finds Miller to be a more credible witness than claimant.

**DECISION:**

The July 1, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Decision Dated and Mailed

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