

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

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Appeal Number: 05A-UI-08928-ET
OC: 07-24-05 R: 02
Claimant: Appellant (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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 17, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 13, 2005. The claimant participated in the hearing. Steve Day, District Supervisor, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general manager for Kum & Go from September 2003 to July 23, 2005. On July 22, 2005, the claimant's girlfriend was working as an associate at another store. She was scheduled to work until 8:00 p.m. but her relief called in and said he

could not work. The claimant's girlfriend called her manager, Michael Levingood, and he asked if she could stay until 10:00 or 11:00 p.m. and she said no. Mr. Levingood called a few other employees to see if they could go in. While he was doing that the claimant called Mr. Levingood and said he needed to find a replacement for her or go in himself. The conversation became very heated and following the call from the claimant, Mr. Levingood called District Supervisor Steve Day at 8:20 p.m. Mr. Day was scheduled to leave on vacation the next morning and had sent a district wide e-mail stating Mr. Levingood and General Manager Nick Bazzocco were in charge of the district and provided their cell phone numbers. Mr. Levingood told Mr. Day about the call he received from the claimant about his girlfriend and indicated the claimant was inappropriate. He also stated he was getting ready to go in to relieve the claimant's girlfriend. Around 8:25 p.m., Mr. Bazzocco called Mr. Day and told him the claimant also called him and was "very demanding" about getting his girlfriend off work. Mr. Levingood arrived to take over for the claimant by 8:40 p.m. One week earlier the claimant had a 17-year old boy working overnight even though Mr. Day had asked him not to do so. At 2:00 a.m. the boy's mother called Mr. Day from the store and said her son was throwing up and needed to go home. She told him her son had tried to call the claimant at home but his girlfriend took the call and said the claimant told her to tell the boy to try to find someone to relieve him and he was unable to find anyone so Mr. Day went in after receiving the call from the boy's mother. Mr. Day had talked to the claimant in the past about what he considered to be "out of control behavior" regarding his attitude and interactions with others.

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 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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant had no work-related connection to the store where his girlfriend was working and consequently it was inappropriate and unprofessional for him to intervene on her behalf in a way he would not have for another employee that did not work at his store. In addition to interfering with another manager's responsibilities, the claimant did not simply call the other managers and politely inquire about the situation but instead berated and argued with both of them and his conduct alarmed them enough that both called Mr. Day within five minutes of each other to complain about his behavior. This situation occurred one week after the claimant failed to relieve a 17-year old boy he had working an overnight shift at his store who became ill. The claimant's actions July 22, 2005, were not an isolated incident and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The August 17, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kjf