

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI R HENLEY
Claimant

APPEAL NO. 13A-UI-04406-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 03/24/13
Claimant: Appellant (3)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 9, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work due to lack of child care. After due notice, a telephone hearing was held on May 21, 2013. Claimant participated. The employer participated by Ms. Tara McKeehan, Merchandiser.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Brandi Henley was employed by Git-N-Go Convenience Stores, Inc. from October 12, 2012 until March 19, 2013 when she was discharged by the employer. Ms. Henley worked as a full-time cashier and was paid by the hour. Her immediate supervisor was Tara McKeehan.

Prior to her discharge, Ms. Henley had been warned that her attendance was unsatisfactory. A written warning was issued to the claimant on February 4, 2013 informing the claimant that her employment was in jeopardy because of excessive, unexcused absenteeism. Ms. Henley was terminated from her employment with the company after the claimant left a note stating that she would not be attending scheduled work on Tuesday, March 19, 2013 or for the remainder of the week because of lack of child care. When the claimant stated that she would not be reporting for scheduled work for the remainder of the week and had not secured advanced permission from the employer to be absent, a decision was made to terminate Ms. Henley from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and

that the concept includes tardiness, leaving early, etc. The Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility" are unexcused.

In the case at hand, the evidence in the record establishes that Ms. Henley had missed numerous days of work and that the claimant at her own request had been given one week off work for bereavement when her grandfather had died. The claimant had often switched working hours with other employees but did not report when it was her turn to work the shift that she had traded with another worker. The claimant had also been absent because she had been personally upset, her children were out of school and she had no babysitting coverage.

A decision was made to terminate Ms. Henley when after being specifically warned, the claimant nonetheless indicated that she would not be reporting for work for the remainder of the week of March 18, 2013 because she once again did not have sufficient child care arrangements.

No aspect for the contract of employment is more basic than the right of the employer to expect employees will appear for work on the hour and day agreed upon. Recurrent failure to honor that obligation evinces a substantial disregard for the employer's interests and justifies a finding of misconduct in connection with the work. The employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 9, 2013, reference 01, is affirmed as modified. The portion of the determination disqualifying the claimant from receiving benefits is affirmed. The portion of the determination finding the claimant voluntarily quit work is modified to find the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs