

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

AMY F RICH
Claimant

APPEAL NO. 07A-UI-03992-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

**OC: 03/25/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Git-N-Go Convenience Stores, Inc. filed an appeal from a representative's decision dated April 11, 2007, reference 01, which held that no disqualification would be imposed regarding Amy Rich's separation from employment. After due notice was issued, a hearing was held by telephone on May 3, 2007. Ms. Rich participated personally and offered additional testimony from Brenda Cole. The employer participated by Linda McKelvey, Supervisor.

ISSUE:

At issue in this matter is whether Ms. Rich was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rich began working for Git-N-Go on November 28, 2006. She was last employed full time as an assistant manager. She was at work on March 12, 2007, when the police arrested her at work. Her manager took her keys from her at that point and told her she did not know if she would still have a job. The police questioned Ms. Rich concerning fraudulent checks she had cashed for customers while at work. She was not formally charged with any crime and was allowed to leave police custody after her statements to the police were verified. She was taken away at approximately 10:00 a.m. and remained in police custody until late in the afternoon. Because she was released near her usual quitting time, she did not return to work on March 12.

Ms. Rich called the employer before the start of her shift on March 13 to determine if she still had a job. The manager on duty, Charlene, advised her that she no longer had a job. Therefore, Ms. Rich did not return to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. Rich was discharged from the employment when she spoke to a manager on March 13. Charlene told her she no longer had a job with Git-N-Go. For the above reasons, the separation is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. Rich was discharged after she was arrested at work. She had no control over if and when the police might choose to arrest her. The employer failed to establish that Ms. Rich engaged in any conduct that caused her to be arrested at work. Inasmuch as the arrest was beyond her control, it did not constitute misconduct on her part. Accordingly, there is no basis on which to disqualify Ms. Rich from receiving job insurance benefits.

The employer contended that Ms. Rich was separated because she failed to report for work on March 13 and 14. The administrative law judge found Ms. Rich's testimony, and that of her witness, to be credible as it related to the conversation Ms. Rich had with her manager on March 13. Because Ms. Rich was discharged on March 13, before the start of her shift, she would not be expected to work on March 13 and 14.

DECISION:

The representative's decision dated April 11, 2007, reference 01, is hereby affirmed. Ms. Rich was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw