

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN H GRIGGS

Claimant

APPEAL NO. 11A-UI-11763-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIER REAL ESTATE SERVICES

Employer

OC: 05/01/11

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Justin Griggs, filed an appeal from a decision dated August 29, 2011, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 28, 2011. The claimant participated on his own behalf. The employer, Premier Real Estate (Premier) participated by Regional Property Manager Sami Jo Smith, Head of Maintenance Doug Bloom, and Alicia Perez

ISSUE:

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

FINDINGS OF FACT:

Justin Griggs was employed by Premier from May 16, 2011 until August 5, 2011 as a full-time maintenance person. On August 4, 2011, a resident came to the employer to state a VISA gift card had been stolen from his apartment. The resident had checked with the VISA office and found out the money had been spent at a gas station and a Ruby Tuesday restaurant on July 29, 2011. The claimant had been in the tenant's apartment on July 27, 2011.

Regional Property Manager Sami Jo Smith met with the claimant that same day and asked him what he had done the prior weekend. She asked if he had gone out to dinner and he said he had and said it was at Ruby Tuesday. Then she questioned him about the missing VISA gift card from the tenant's apartment. He denied taking it and the employer told him there would be further investigation, which would include the video surveillance of the gas station where the gift card had been used.

The next day Head of Maintenance Doug Bloom called Ms. Smith and said he had gotten a call at midnight from the claimant asking about what he had done wrong. At some point, the claimant said he had agreed to pay back the tenant for the gift card. The tenant was questioned and admitted the claimant had apologized and agreed to pay the money back. Mr. Griggs was discharged by Ms. Smith on August 5, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had denied all allegations against him regarding the theft of the gift card. But, he admitted to apologizing to the tenant and to agreeing to pay the tenant back. The administrative law judge considers this to cast the claimant's testimony into doubt. It seemed entirely too convenient that the gift card was spent at Ruby Tuesday and the claimant admitted to being there on the same date the gift card was used, even before he knew the reason Ms. Smith was asking him the question.

Mr. Griggs maintains the employer's witnesses had conspired to fabricate the testimony regarding the reason for his discharge, but could provide no evidence as to why this would be done. Sufficient inconsistencies exist in the claimant's testimony to call his own veracity into question.

The employer has established by a preponderance of the evidence that the claimant took a gift card from a resident's apartment while he was there in the performance of his regular job duties. The employer has the obligation to provide a safe and crime-free work environment for all of its tenants and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of August 29, 2011, reference 04, is affirmed. Justin Griggs is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw