

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGIE M SPRINKEL**  
Claimant

**APPEAL NO. 09A-UI-11653-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAS-MART INC**  
Employer

**Original Claim: 06/28/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
81 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 11, 2009, reference 02 that held the claimant was not discharged for misconduct on January 23, 2009, and that allowed benefits. A telephone hearing was held on August 27, 2009. The claimant participated. Marty Johnson, District Manager, participated for the employer. Official Notice was taken of the employer appeal documents.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time cashier from December 17, 2008 to January 23, 2009. The claimant signed and submitted an application for employment to the employer on December 13, 2008. The application contains 12 paragraphs of exceptions from the criminal offense reporting requirement. The store manager reviewed the application during a pre-hire interview with the claimant.

The employer received information that the claimant had falsified her employment application by failing to disclose a conviction for a criminal offense. The claimant had pled guilty to a simple misdemeanor, disorderly conduct, on February 8, 2007, and a paid a fine of \$100 with court costs. The claimant believed the application did not require disclosure of a criminal offense unless a felony. The claimant provided her criminal conviction information on January 23 in order to try and save her job, but the employer did not change its position for discharge on that date.

The decision to discharge was made by management in consultation with human resources. An HR administrative letter from Jonas-Tilghman dated August 24, 2009 states: "Court records indicate she (meaning claimant) pled guilty and was found guilty in a case of possession of a controlled substance". The employer did not run a criminal background check on the claimant prior to employment.

### **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes that the claimant was not discharged for any current act of misconduct in connection with employment on January 23, 2009.

Although there is an issue whether the employer's HR department understood the criminal conviction was for a simple misdemeanor (disorderly conduct) rather than possession of a controlled substance, the claimant worked for the employer for more than one month prior to

discharge. The employer had an opportunity to question the claimant about her offense at the pre-hire interview, and it could have run a criminal offense record check if it deemed this matter was material to the claimant's employment.

The application lists 12 paragraphs of exceptions to the reporting requirement of any criminal record by an applicant that lives in the states enumerated. The claimant could have been easily misled by these exceptions to the point she believed she only had to report a felony.

**DECISION:**

The department decision dated August 11, 2009, reference 02, is affirmed. The claimant was not discharged for misconduct on January 23, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw