

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY K ELLIOTT
Claimant

APPEAL NO. 10A-UI-08581-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AYERCO CONVENIENCE CENT
Employer

OC: 10/18/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Dorothy Elliott, filed an appeal from a decision dated June 10, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 3, 2010. The claimant participated on her own behalf and with witness Darrell Kraft. The employer, Ayerco, participated by Store Manager Nicole Anderson, Assistant Store Manager Tammy McKeown and Office Manager Tammy Perrine.

ISSUE:

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

FINDINGS OF FACT:

Dorothy Elliott was employed by Ayerco from December 3, 2009 until May 10, 2010 as a part-time cashier. She did not receive a copy of the employee handbook and was trained “on the job” by various members of the staff. At some point she may or may not have been told that when a customer drives off without paying for gas, she was to notify the police immediately and fill out an incident report.

On Saturday, May 8, 2010, Assistant Manager Tammy McKeown came to the cash register area around 9:00 a.m. Ms. Elliott told her at that time there appeared to have been two drive offs and showed the assistant manager the computer screen. Ms. McKeown told her to call the police immediately which she did. There were three transactions by two different customers that were not paid for. She was only able to give some idea of the make, model and color of one vehicle.

Ms. McKeown notified Store Manager Nicole Anderson there had been three drive offs and the manager contacted Ms. Elliott and told her to fill out the incident reports. The decision was made to discharge the claimant because she had allowed three drive offs in a short period of time and was not paying attention to the cars at the pumps to be able to give a good description of them to the police.

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 employer does not expect an employee to prevent a car from driving off without paying for gas. There is no policy regarding that. The employer does expect the employee to notify law enforcement immediately and to fill out an incident report with as much information as possible. This is what Ms. Elliott did. The drive offs occurred and she notified the assistant manager who told her to call the police and she did. The fact the claimant may not have had as much information as the employer would have liked about make, model and color is not a deliberate act of misconduct.

The employer has failed to meet its burden of proof to establish the claimant was discharged for substantial, job-related misconduct or repeated negligence sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of June 10, 2010, reference 02, is reversed. Dorothy Elliott is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css