

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMARA A LUSTER**  
Claimant

**APPEAL NO: 10A-UI-06599-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIT-N-GO CONVENIENCE STORES INC**  
Employer

**OC: 03/21/10  
Claimant: Appellant (1)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 26, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on June 24, 2010. The claimant responded to the hearing notice, but was not available for the hearing. The claimant did not respond to the message left on her voice mail. John Judge, the supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant to work as a full-time evening cashier. The claimant started working on October 14, 2009. When the claimant started her employment, she received information about the employer's policies. One policy informed employees they can be discharged if they "play" (buy and scratch off) lottery tickets while they work.

Shortly before March 22, 2010, a co-worker saw the claimant buy lottery tickets and scratch them off during her shift. The co-worker reported this incident. The employer also learned the claimant had done this same thing a number of times. The first time the employer learned the claimant bought and scratched off lottery tickets at work was on March 22, 2010.

When the employer talked to the claimant about buying and scratching off lottery tickets during her shift, the claimant acknowledged she had done this. The employer discharged the claimant for violating its policy regarding lottery tickets during an employee's shift.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew the employer did not permit employees to buy and scratch off lottery tickets during a scheduled shift. When the employer talked to the claimant on or about March 22, she admitted she violated the employer's lottery ticket policy. The facts indicate the claimant "played" lottery tickets more than once during her employment. The claimant's conduct - playing lottery tickets at worked - constitutes work-connected misconduct. As of March 21, 2010, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's April 26, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 21, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css