

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RAEGEN T WILLIAMS
400 E ARLINGTON ST
WATERLOO IA 50703

CHECK-N-GO OF IOWA INC
c/o HUNTER CONSULTING CO
6600 CLOUGH PIKE
PO BOX 54865
CINCINNATI OH 45254-0865

Appeal Number: 06A-UI-00290-HT
OC: 12/04/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Raegen Williams, filed an appeal from a decision dated December 30, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 25, 2006. The claimant participated on her own behalf. The employer, Check-N-Go, participated by District Director of Operations Matt Stone.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Raegen Williams was employed by Check-N-Go from October 10 until December 2, 2005. She was a full-time customer service representative.

On November 30, 2005, the claimant was scheduled to work and arrived at the store to find the assistant manager, Angela Bates, working instead. Ms. Bates told the claimant that the store manager, Kim Beckford, wanted her to go home and wait for her to call. When no call came by December 2, 2005, Ms. Williams came to the store and was told by the manger to turn in her keys, that she should "explore other avenues of employment" and that she and the employer "needed to part ways."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's testimony, based on secondhand information, was that the claimant quit by going to Ms. Bates's home and giving a verbal resignation. However, neither Ms. Bates nor Ms. Beckford, although still employed by Check-N-Go, participated in the hearing to rebut the claimant's testimony that she was fired. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay

open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has not provided firsthand, eyewitness testimony regarding the alleged resignation by Ms. Williams. The claimant's testimony is that she was discharged, and in light of the employer's failure to rebut this evidence, it must be concluded she was in fact discharged. The employer has failed to present any evidence of substantial, job-related misconduct, and disqualification cannot be imposed.

DECISION:

The representative's decision of December 30, 2005, reference 01, is reversed. Raegen Williams is qualified for benefits provided she is otherwise eligible.

bgh/kjw