

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCHELLE E STRIPE
Claimant

APPEAL NO. 07A-UI-06938-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES, INC
Employer

**OC: 06/10/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 9, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 2, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda McKelvey participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a cashier for the employer from January 24, 2006, to May 12, 2006. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer four hours before the start of their shift and find their own replacement if they were not able to work as scheduled.

The claimant's next scheduled day of work was May 14 at 4:00 p.m. That morning a personal emergency situation occurred with the claimant's 15-year-old daughter, which caused the claimant to be unable to work as scheduled. As soon as the claimant knew she needed to miss work that afternoon, the claimant called the store at 12:30 p.m. to notify the employer that she needed to be off work. She was directed to contact the district manager, John Judge. She immediately contacted Judge and explained that she needed to be off work and why. She was told that she had to find someone to work for her. She told Judge that she was not able to find a replacement because of the situation involving her daughter and she believed she had given the employer plenty of advance notice to replace her. Judge told her that if she did not report to work or find her own replacement, she would be discharged. The claimant reiterated that she was not able to work and could not find a replacement.

The claimant spent the remainder of the day handling and making arrangements for her daughter's emergency situation. She did not report to work after May 14, because she reasonably believed, based on Judge's statements to her, that she had been discharged.

The employer discharged the claimant because she failed to report to work or find her own replacement on May 14. The claimant had one previous absence due to legitimate medical reasons, which was properly reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. While the employer may have been justified in

discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. I believe the claimant's testimony that Judge informed the claimant on May 14 that she was discharged. Consequently, the claimant was not absent from work without notice on the days following May 14. The claimant testified credibly that her absence on May 14 was not due to her being arrested or jailed, as the employer contended. While it is not unreasonable for an employer to require employees to locate a replacement, this is not always practical.

DECISION:

The unemployment insurance decision dated July 9, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw