

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ALYSA A WEISS
Claimant

APPEAL NO. 18A-UI-06864-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 05/27/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Git-N-Go (employer) appealed a representative's June 12, 2018, decision (reference 01) that concluded Alysa Weiss (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 11, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jeffrey English, Supervisor.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 30, 2017, as a full-time assistant manager. The claimant signed for receipt of the employer's handbook on October 30, 2017. The employer did not issue the claimant any written warnings during her employment. The supervisor scheduled the claimant to work nine to eleven hour shifts. There was nothing in writing saying employees had to work shifts longer than eight hours.

The claimant properly reported her absence due to a medical issue on January 16, 17, and 18, 2018. The doctor faxed a medical excuse to the supervisor on January 18, 2018, excusing the claimant from work for the three days. When the supervisor received the excuse, he called the claimant and verbally reprimanded her for her absenteeism. The supervisor notified the claimant that further infractions could result in termination from employment.

On March 25, 2018, the claimant called the supervisor and said she had a note from her physician stating she could not work shifts longer than eight hours. The claimant said she would fax the supervisor the note. The supervisor told the claimant it was unfortunate that hours at the store were nine or ten hours long. If she could not work those hours, she could not

work for the employer. The employer terminated the claimant for having a doctor's note limiting her shifts to eight hours.

The claimant filed for unemployment insurance benefits with an effective date of May 27, 2018. The employer participated personally at the fact finding interview on June 11, 2018, by Lanette Butt.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App.

1984). The employer did not provide any evidence of job-related misconduct. The claimant's limitation of hours to eight hour days due to a medical condition is not outlandish. The employer could not point to any policy the claimant violated. It could not show that the claimant's actions had any wrongful intent. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 12, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs