

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARI FAZIO
Claimant

GIT-N-GO CONVENIENCE STORES INC
Employer

APPEAL 20A-UI-05264-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 2, 2020, the claimant filed an appeal from the May 28, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2020. Claimant participated. Employer participated through Shelly Rodrigues. Exhibits 1 - 7 were admitted into the record.

ISSUE:

Did claimant voluntarily quit the employment with or without good cause attributable to employer?
Did claimant commit job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kari Fazio, claimant, was hired as a full time cashier for Git-N-Go Convenience Stores, Inc. on August 23, 2016. Claimant worked at store number 26. Claimant's last day at work was March 31, 2020. Claimant was on vacation on April 1, 2020 through April 3, 2020. Claimant testified that due to the Covid-19 she no longer had day care for her children. Claimant testified that she felt that she faced a risk of exposure to Covid-19 while working. Claimant said there was no personal protective equipment, masks, shields, gloves, hand sanitizer, spacing in the store or barriers, in the work place. Claimant testified that she felt it was unsafe for her to continue to work. Claimant testified she has a child with a heart condition. Claimant said that she told her supervisor, Gentry Luna, before her vacation that she was considering resigning due to the Covid-19 pandemic.

Claimant was requested to attend a meeting concerning store security on April 3, 2020. Claimant went to the meeting, and as she had no daycare brought her children. The meeting was called off, as the employer did not want to conduct the meeting with children present. Claimant called the employer on April 3, 2020 after the canceled meeting and resigned her position.

The employer through supervisors, Shelly Rodrigues and Lanette Butt, were investigating whether the employees at the store that claimant worked at were not following company policy by giving away merchandise, improperly undercharging for merchandise and not paying for merchandise. The employer has a policy against this type of activity. Claimant was aware of the policy. (Exhibit 1) Ms. Rodrigues reviewed video of the claimant working as a cashier. The video records the claimant and what merchandise is being rung up. Ms. Rodrigues said the investigation showed several instances of claimant giving away merchandise including one incident where the store manager was not charged to \$40.00 in gas. The manager is no longer employed at Git-N-Go. The employer submitted six exhibits consistent of pictures of claimant at the counter and whether the merchandise was being rung up properly. Ms. Rodrigues testified that she reviewed the entire video of the six transactions and the video showed claimant was not properly charging customers.

Claimant denied she had not properly charged customers. Claimant did admit the person shown in Exhibit 3 would come into the store and promise to pay, but did not always do so and that he received free merchandise.

REASONING AND CONCLUSIONS OF LAW:

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

I found the testimony of the employer to be credible that claimant was not properly charging for merchandise. I find that claimant violated company policy and that claimant was aware of the company policy. The employer investigated the claimant and made the decision to terminate claimant before she quit. I find claimant committed job related misconduct and is not eligible for regular unemployment benefits.

As I have found the employer has proven job related misconduct, the issue of whether claimant quit with good cause attributable to her employer is moot.

DECISION:

The May 28, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for job related misconduct.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>



James F. Elliott
Administrative Law Judge

July 8, 2020
Decision Dated and Mailed

je/sam